

**When Diversities Clash:
Sexual Orientation, Religious Beliefs, Professional
Ethics, and the U.S. Constitution**

**2013 APA Education Leadership Conference
Ethics and Education**

**Stephen Behnke, JD, PhD, MDiv
Director, Ethics Office
American Psychological Association**

The APA Student Ethics Writing Prize!

www.apa.org/ethics

Ethics Educator Award!

Erica Wise
2013 Ethics Educator

& her student

Christine Paprocki
2013 Student Ethics Writing Prize
Winner

Julea Ward

Ward v. Wilbanks (2010)

Ward v. Polite (2012)

Three Areas to Cover:

I. Overarching principles

II. Facts of the *Ward* case

III. How the courts analyzed the facts

I. Overarching Principles

1. **Something did not go well**
2. **Substance vs. process**
3. **Deference to educators**
4. **The “rubber band” theory**
5. **Something did not go well**

A “Four Bin” Analysis

Four Bins/Lenses

- Legal
- Ethical
- Risk Management
- Training

II. The Facts of the Case

Julea Ward

Two options

No-referral policy

The American Counseling Association Code of Ethics (2005)

A.4.b. Personal Values

Counselors are aware of their own values, attitudes, beliefs, and behaviors and avoid imposing values that are inconsistent with counseling goals. Counselors respect the diversity of clients, trainees, and research participants.

The American Counseling Association Code of Ethics (2005)

C.5. Nondiscrimination

Counselors do not condone or engage in discrimination based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law. Counselors do not discriminate against clients, students, employees, supervisees, or research participants in a manner that has a negative impact on these persons.

The United States Constitution

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

III. How the Courts Analyzed the Facts

A. The District Court

B. The Appeals Court

The District Court

The program's policy was “neutral”
and “generally applicable”

The policy did not single out Julea
Ward's religious beliefs.

e.g., Veterinary school

The District Court

“The dismissal was entirely due to plaintiff’s refusal to change her behavior, not her beliefs.”

The Appeals Court

Is the policy being applied in a *selective* manner?

The Appeals Court

- School did not have any written no-referral policy (an “after-the-fact invention”?)
- School and the ACA Ethics Code allow referrals
- The ACA Ethics Code allows explicitly *value-based* referrals
- School had a “yes-referral” policy

The American Counseling Association Code of Ethics (2005)

A.11.b. Inability to Assist Clients

If counselors determine an inability to be of professional assistance to clients, they avoid entering or continuing counseling relationships. Counselors are knowledgeable about culturally and clinically appropriate referral resources and suggest these alternatives. If clients decline the suggested referrals, counselors should discontinue the relationship.

The American Counseling Association Code of Ethics (2005)

A.9.b. Counselor Competence, Choice, and Referral

Recognizing the personal, moral, and competence issues related to end-of-life decisions, counselors may choose to work or not work with terminally ill clients who wish to explore their end-of-life options. Counselors provide appropriate referral information to ensure that clients receive the necessary help.

The Appeals Court

At some point, an exception-ridden policy takes on the appearance and reality of a system of individualized exemptions, the antithesis of a neutral and generally applicable policy and just the kind of state action that must run the gauntlet of strict scrutiny.

The Appeals Court

**A reasonable jury could find that the
policy was “Pretextual”**

**The Formal Review: A “Theological
bout”**

Briefly: The take-home points

- A program may establish a policy requiring students to abide by a professional code of ethics. How the policy is *applied* is what caused the problem in the *Ward* case.
- Schools may prohibit students from imposing their values on students.
- Best *not* to introduce religion as an issue in disciplinary and remedial hearings.
- Legally relevant question: When do the exceptions swallow up the rule?

Training and Education in Professional Psychology

2012, Vol. 6, No. 4, 189-195

**Constitutional Claims in the Context of
Mental Health Training: Religion,
Sexual Orientation, and Tensions
Between the First Amendment and
Professional Ethics**