

## First Amendment Rights of Licensed Teacher Litigated in Federal Court



**Devin Bates**  
dbates@mwlaw.com  
(501) 688.8864

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A licensed teacher was investigated, but the case was closed without disciplinary action taken. The teacher was warned that the existence of the investigation and its outcome were to remain strictly confidential. The teacher claimed that this is contrary to his First Amendment rights. Can the teacher talk? A federal appellate court recently took up this issue, and announced an opinion contemplating the teacher's constitutional rights.

**Outcome:** Inconclusive. The federal court of appeals held that the lower court had not adequately developed a factual record so the court was unable to rule. Interestingly, the case was not thrown out and was instead allowed to proceed.

**Explanation:** The teacher seeks an injunction to effectively defeat the gag order placed upon him. The jurisdiction at issue in this case has a law that can be used to charge a teacher with a crime should they talk about an investigation. Because the investigation had been closed, the lower court concluded in part that the issue was moot. But according to the appellate court, the teacher still faced the potential risk that they could be charged with a violation should they open their mouth. For this reason the case was allowed to continue.

**Lessons Learned:** Regardless of the law, rule, or policy invoked, the First Amendment is a strong force that must be carefully handled by administrators, school boards, and state departments of education. Here, the fact that the investigation was closed was not the end of the story. What the court focused on was the viability of the ongoing threat that, should the teacher talk, there would be legal recourse. This case also shows that constitutional litigation involving the First Amendment is complex. This reality is confounded by a constantly evolving legal landscape made up of cases such as this one.

Case reference: *John Doe v. Gov. of Penn. et al.*, no. 18-3299 (3rd Cir. Nov. 4, 2019).