

Allen v. McDonough Working Files

1974-1998; bulk: 1976-1992

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Office of the General Counsel, Boston Public Schools

Project funded by the National Historic Publications and Records Commission

Collection Summary

Creator:	Office of the General Counsel, Boston Public Schools	Abstract:
Title:	Allen v. McDonough Working Files	On June 10, 1976, plaintiffs filed suit in Suffolk Superior Court alleging a system-wide failure to evaluate and prepare educational plans for students referred for special education and to conduct periodic reviews to monitor progress in accordance with state regulations. Allen v. McDonough was the first class action suit brought against a school system in Massachusetts for non-compliance with Chapter 766. The State Department of Education intervened on the side of the plaintiffs. The Allen v. McDonough Working Files represent the work of two defense attorneys who represented Boston Public Schools in this case: Michael Betcher (1976-84) and Marien E. Evans (1985-1992). From approximately 1992 until 1998 the law firm of Goulston and Storrs handled representation. The files span the years 1974 through 1998 but the bulk consists of the years 1976 – 1992.
Physical Description:	20 cubic feet	
Language:	English	
Repository:	City of Boston, Office of the City Clerk, Archives and Records Management Division 201 Rivermoor St. West Roxbury, MA 02132 archives@cityofboston.gov	

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Allen Case History

In 1972, the Massachusetts General Court enacted a special needs education law, Chapter 766 of the Statutes of 1972, to become effective September 1974. Chapter 766 was widely recognized as the most comprehensive and inclusive legislation on educating people with disabilities of any state in the nation mandating that educational services provide the “maximum feasible benefit” to students identified with special needs and that these services be provided in the “least restrictive environment” possible.

On 1975, a report prepared by the Massachusetts Advocacy Center, “Special Education in Boston: The Mandate and the Reality”, concluded that Boston was not in compliance with Chapter 766. The Center together with the Boston Advisory Group on Chapter 766 Litigation initiated an investigation into the nature of Boston’s failure to comply and

found increasing backlogs of overdue reviews and evaluations. Long but unsuccessful negotiations, aimed at bringing Boston into compliance with the law, resulted in a decision to litigate.

On June 10, 1976, plaintiffs filed suit in Suffolk Superior Court alleging a system-wide failure to evaluate and prepare educational plans for students referred for special education and to conduct periodic reviews to monitor progress in accordance with state regulations. *Allen v. McDonough* was the first class action suit brought against a school system in Massachusetts for non-compliance with Chapter 766. According to the complaint filed by the plaintiffs, it was estimated that approximately 1400 children who had been referred for special education evaluations had been awaiting their completed educational plans for more than 30 school working days. It was estimated that 7250 students were awaiting a review of their educational progress. The State Department of Education intervened on the side of the plaintiffs.

On June 26, 1976, a Consent Decree was approved granting preliminary relief to the plaintiffs and on September 20, 1976, the parties entered into a Supplemental Consent Decree whereby the defendants agreed to provide by October 15, 1976 educational plans and reviews to students who had not received such plans or reviews prior to June 23, 1976. Boston further agreed to develop an implementation plan and report weekly to the plaintiffs concerning assessments, development of educational plans, the number of children placed in special education and the number awaiting placement. Subsequently, the Court entered an Implementing Order on November 24, 1976 that set outside time limits for placement of children in special education programs.

The required reports filed with the Court in the fall of 1976 indicated that the defendants were unable to achieve compliance and they were found in civil contempt of court orders on April 13, 1977. On June 1, 1977, the Court ordered Boston to submit a detailed proposal for compliance which was to address the implementation of an information management system as well as administrative and personnel issues no later than June 30, 1977. Subsequently, in September 1977, the Court again found Boston to be in contempt and ordered the provision of compensatory educational services to students who had been delayed more than 60 days in receiving Chapter 766 entitlements contrary to court orders. In April 1978, the Court appointed a Special Master, Sr. Nancy Mehlem, O.P., to evaluate Boston's compensatory special education program. In June 1978, defendants were again ordered to provide compensatory special education services and during each of the following years, the Court continued to find the defendants in contempt and ordered compensatory services in May 1979, August 1980, May 1981 and May 1982.

In May 1979, Superior Court entered its first order relative to transportation services. That order directed that those students who had been overdue for transportation services for 15 school days and who had been denied special education transportation for 5 consecutive days were entitled to compensatory services. In January 1980, the parties entered into, and the Court approved, a Stipulation that the provision of reliable, timely and substantially uninterrupted transportation was required as part of the entitlements of Chapter 766.

On August 19, 1980, a Further Order established the Office of Court Monitor and Alex Rodriguez was appointed effective January 1, 1981 for a two-year term. The Monitor reported directly to the Court and was charged with determining the most effective methods for the functioning of special education programs. The Monitor was authorized to make formal recommendations to the Court and such recommendations were to be binding upon Boston unless objected to and modified by the Court. The position of Court Monitor ended July 1983 and the system was modified to provide an independent monitoring presence operating on the defendant's premises in conjunction with a monitoring presence from the Department of Education. Sr. Nancy Mehlem, O.P. was appointed Independent Monitor.

For its part, the Boston Public Schools instituted a Comprehensive Internal Compliance Management System consisting of monthly data management reports and the Superintendent's Assurance Management Checklist. In 1979 the Compliance Folder Review process was instituted which involved visits to at least 10 schools each year during which student folders were examined to determine whether the appropriate documentation of activities was present. In 1983, a Comprehensive Internal Progress Review Process was begun during which teams of four experienced staff would visit 40 schools each year. During the visit, folders were reviewed, the facility examined and the school staff and parents interviewed. The team would then report on any remedial actions that the school should take. In 1984, the Special Education Information Management System (SEIMS) began to track students and timelines for evaluations and reviews and in 1985 a Unitary Complaint System to track transportation complaints was instituted. However, as the

Independent Monitor would report, Boston always fell far short of compliance. One of the many problems Boston encountered in its attempts to comply with Chapter 766 was the sheer number of special education students in the system. Boston special education population was 20% higher than the national average and 12% higher than the Great City Schools. In 1977, there were 7900 special education students. By 1986, that number had increased to 12,000 while the overall total school population declined. Additionally, the Boston Public Schools were run as a centralized operation from whence information, authority and decisions flowed down from the Central Office to the schools thus creating delays in identifying and solving compliance problems. Moreover, non-compliance resulted in part because the school system was ill prepared for the processing of all of the individual education evaluations, placements in special programs, ancillary services and yearly Individual Educational Plan (IEP) reviews for which the schools were now held responsible. The strict regulations surrounding the development of a single IEP required an inordinate amount of coordination and paperwork to prepare the mandated assessments. Effectively responding to the need for new program options and solving the problems of evaluation and service delivery systems required extensive planning. However, because of the litigation, compliance with the complex requirements became a more immediate and absolute necessity than building the structure and organization that was required to guide, process, fill and monitor all the requests for services that were instituted.

In January 1986, the Court authorized the Independent Monitor to retain a Disengagement Facilitator to assist the Monitor and the parties in the process of disengagement for the Court's oversight. Upon agreement of the parties, New York attorney, Michael Rebell, was appointed Disengagement Master to assist in resolving disputes between the parties, adjudicate allegations of non-compliance and facilitate movement toward substantial compliance and disengagement from the Court. In August 1986, Rebell issued an Order Concerning Disengagement. The order created the Office of the Allen Monitor and established percentage goals in eight areas that, if met for at least six of the ten school months, would constitute the degree of compliance necessary for the Court to disengage. The eight areas set forth were: original evaluations, re-evaluations, annual reviews, IEP's not fully implemented, IEP's not provided to parents within eight school working days, IEP's translated into languages other than English, students awaiting placement out of district and transportation. The defendants agreed to maintain the Comprehensive Internal Compliance Management System and appoint a Compliance Officer. In July 1987, an Amended Order was entered ordering Boston to maintain a recruitment staff consisting of a full time unit leader and three full time recruitment specialists for special education and critical area recruitment. Additionally, Boston was to fund the Special Needs Parent Advisory Council through June 1990 and to provide fees, office space, equipment and telephone services.

In June 1988, the Court entered Supplemental Order Concerning Disengagement under which the Allen Monitor was given authority to certify to the Department of Education that Boston was making reasonable progress. Unless such certification was made, the Department would withhold Boston's federal education funds. The order also revised the category of IEP's not fully implemented to include violations where bus monitors were not provided as required in IEP's. Finally, the order required the defendants to submit a Compliance Action Plan designed to bring Boston into compliance with the Disengagement Orders. The role of the Allen Monitor was expanded to include authority to issue written findings regarding certain areas of non-compliance and make recommendations for appropriate remedial action. In June 1988, Nancy Mehlem resigned and in September Richard Cohen became Allen Monitor until 1993. In November 1990, the Disengagement Master recommended that the defendants hire consultants to determine the needed changes to bring the schools into compliance and the Court so ordered in Disengagement Order # 5. "Managing Special Education in Boston" by Arthur D. Little Co. issued June 14, 1991 recommended four initiatives: a) resolution of conflicts between evaluation and special education service delivery, b) decentralization of authority and responsibility for special education to the school level, c) clarification of a school-based management structure so that authority and accountability for special education at the school level was clear and workable, and d) improvement of data management, record keeping and reporting. Disengagement Order # 8 of June 1992 ordered the creation of an Implementation Team to formulate a plan for implementing the four Arthur D. Little initiatives. The Implementation Team was to be composed of prominent educators. In October 1992, the Team released "Total Quality Services for All Students" which incorporated the ADL initiatives and called for the full integration of special education into regular education settings, the integration of the SPED PAC with other parental councils and the enhancement of school based management. Disengagement Order # 8 also required the Superintendent to submit a final plan. The March 1993 Revised Implementation Plan of the Superintendent incorporated both ADL and Implementation Team recommendations and was also consistent with the Superintendent's "Reorganization Plan" which was designed to decentralize special education and other Boston Public School services. The fundamental premise underlying both

plans was the concept of “school-based management” which essentially describes a process that places greater authority and responsibility in the principal for all educational services provided in his/her building. The Plan also proposed replacing the old system-wide data management system with a new school-based data management and compliance monitoring system.

By September 1994, implementation of the Superintendent’s Plan had progressed to the point where the parties agreed and the Court determined that it was appropriate to revise the standards for substantial completion. Disengagement Order # 10 set forth the substantial completion standards and procedures the Boston Public Schools must meet to achieve disengagement. The criteria for disengagement defined in the order was that 90% of schools at each level must be certified for compliance with special education regulations in regard to original evaluations, re-evaluations and the provision of itinerant services including occupational therapy, speech therapy, physical therapy and counseling for two consecutive semesters.

On September 8, 1995, all Boston schools were deemed in substantial compliance. In September 1996, defendants made a Motion for Disengagement and proposed a one-year confirmation period. Disengagement Order # 11 set the confirmation period at one and one half years during which the defendants submitted two semi-annual reports on the status of special education. The confirmation period concluded on December 31, 1997 and on March 26, 1998, the defendants motioned for an Entry of Final Judgment on the grounds that the Boston Public Schools has sustained substantial compliance with the standards set forth in Disengagement Order # 10 for each of the consecutive semesters in SY 1995-1996 and SY 1996-1997. The motion further sought to bring the Boston Public Schools and the Department of Education into a normalized regulatory and monitoring scheme.

Allen v. McDonough lasted twenty-two years. In addition to the Boston Public School’s difficulty in achieving substantial compliance during nineteen of those years, other factors impacted the disengagement process. During the 1980’s in particular, there existed a nation wide shortage of special education teachers, especially bilingual special education teachers and speech therapists. There was also a shortage of occupational and physical therapists for special education students. Additionally, the bus and van drivers of the United Steelworkers of America, Local 8751 conducted work stoppages in 1978, 1980, 1986, 1987 and 1991. As a result of the 1986 strike, the Court ordered the Boston Public Schools to compensate the parents of special education students \$20.00 for each day of school missed and in both 1987 and 1991, the Court appointed Special Transportation Masters to oversee compliance by the Boston Public Schools with its continuing obligation to provide timely, reliable and substantially uninterrupted transportation to special needs students. From 1985 on, the plaintiffs sought a court order that would call for the Boston Public Schools to hire their own bus drivers as public employees thereby prohibiting them from striking pursuant to M.G.L. c150E Sect.9a. The five strikes and the plaintiffs’ strategy added a great deal of additional and supplementary litigation to the original case of Allen v. McDonough.

Note: Allen v. McDonough was also known as Allen v. Nucci or Allen v. Parks depending upon the name of the person who chaired the School Committee of the City of Boston during the period in which the special education issue was litigated.

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Scope and Content

The papers in this collection represent the working files of the two attorneys for the Boston Public Schools who worked on the case and represented the defendants, Michael Betcher (1976-84) and Marien E. Evans (1985-1992). From approximately 1992 until 1998 the law firm of Goulston and Storrs handled representation. The files span the years 1974 through 1998 but the bulk consists of the years 1976 – 1992. There exists no discernible arrangement or filing scheme with the exception of the files of the Allen Monitor, which consist of two series and are included in the collection. The remainder of the collection is entirely haphazard in that materials from 1984 can exist along side materials from 1992 or 1976 but bear no serial or other relationship to one another. For five of the seventeen boxes, the School Department made folder listings that remain in the boxes.

The files consist of Court Orders, pleadings, briefs, memoranda, reports, affidavits, contracts, summaries (minutes) of meetings and agendas, notes, research materials, transcripts, some newspaper clippings, statistical data, manuscripts and correspondence.

Although the lack of arrangement makes the collection more difficult than most to use, it does provide insight into the evolution of the case from a narrow one of meeting timelines for educational plans and evaluations of students sent for special education to a more complex one of producing a detailed analysis and reorganization of special education in Boston establishing percentage goals in eight specific areas and promoting the mainstreaming of special and regular education through a process of decentralization of authority and accountability. The records reveal in detail how the requirements for compliance were hammered out among the parties through the Monitors, Masters and the Court, how the levels of compliance were measured and monitored and how the Boston Public Schools were able to enact a system of compliance monitoring and quality assurance that enabled them to meet the regulations of Chapter 766.

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Access Restrictions

Some records within this collection are restricted as mandated by FERPA guidelines and the Public Records Law (MGL C.4, s. 7, cl.26). Contact archivist for further information.

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Box	Contents
Box 1	Office of the Assistant General Counsel, BPS Working Files, 1984-1994 Correspondence, reports, orders, notes, pleadings, memoranda and materials relating to Disengagement Meetings 1/25/91; 4/4/91; 1/30/90; 6/18/92 and 7/27/92; Disengagement Master's Report # 10 (3/6/92); Report # 9 (7/30/91); Independent Monitor's Report to the Court, April 1984; Court Monitor's Report, March 1982 and May 1983; Joint Report on BPS' Special Education, 1984-85 (April 1985); Allen Monitor's Report 3/4/87; 1/13/92; 8/27/92 and 12/93; pleadings re: the Arthur D. Little Study (1992); Superintendent's Revised Implementation Plan (1/6/93) and Plaintiffs' Responses (1/21/93); Plaintiffs' Further Motion for Modification of Master's Proposed Disengagement Order # 7; Implementation Plan:

Total Quality Services for All Students (10/5/92); Plaintiff-Intervener's Response to Reports Filed Pursuant to Paragraphs 4, 5, 6, 7 and 8b of Disengagement Order # 7 (1/13/92); Data Management Reports, March 1994 and February, March, April and June 1986; Response to BPS' Proposals for Special Education by Arthur D. Little Co. (1/6/92); pleadings and briefs relating to Lois Harrison-Jones et. al. v. United Steelworkers of America, AFL-CIO, Local 8751 et. al. (1992); Strike Contingency Plan (1992); Transportation Monitor's Action Plan (7/31/92) and Comprehensive Internal Compliance Management System (4/29/86)

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(7/20/89); Boston's Opposition to Proposed Further Supplemental Disengagement Order and Disengagement Master's Report # 4 (8/4/89); Analysis of Exceptions (8/3/89); Department of Education's Response to Proposed Further Supplemental Disengagement Order (8/4/89); Disengagement Master's Report # 4 (7/31/89); Allen Monitor's Response to Proposals to Clarify or Modify the Amended Disengagement Order and the Supplemental Disengagement Order (7/12/89); Department of Education's Proposal to Clarify or Modify Amended Disengagement Order and Supplemental Disengagement Order (6/29/89); BPS' Response to DOE's Response to Proposal for Modification (7/11/89); Arthur D. Little's Response to BPS' Proposal for SPED (1/6/92); Allen Monitor's Response to Superintendent's Report Required by Disengagement Order # 7 (1/10/92).

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Box 16 **Office of the Assistant General Counsel, BPS**

Working Files, 1981-1992

Alternative Transportation Contracts (1991); Independent Monitor's Report (7/6/84); Allen Monitor's Report (10/11/91); Data on Attendance for Strike Period 9/24/91 – 10/25/91; BPS' Review of FY 92 Bus Strike Reimbursements (2/92); Response to Draft of Monitor's Third Quarterly Report (8/1/90); Plan to Monitor Special Education in the Boston Public Schools (7/17/84); Action Plan to Address Special Education Substitute Staff Issues (7/84); Disengagement Meeting (1/15/92); Disengagement Master's Report # 3 (4/19/89); Findings and Recommendations on BPS' Reporting Practices and Compliance in Speech and Language Services (6/28/89); Correspondence 1990; Bus Monitor Issues (1990); Parent Advisory Council (1990); Disengagement Master's Report # 5 (9/19/90) and BPS Response (10/4/90); Proposed Disengagement Order # 6 (11/21/90); SPED PAC Demonstration (1986); Disengagement Meeting (10/8/86); Monitor's Response to BPS Error Analysis and Partial Response to Analysis of Monitor (1/28/92); Objections to Proposed Disengagement Order # 5 (9/27/90); Order Concerning Disengagement (1986); Transportation Complaints (1986-87); Disengagement Master's Report # 1 (12/17/86); Correspondence 1981-1992.

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Box 17 **Office of the Assistant General Counsel, BPS**

Working Files, 1987 – 1992

Arbitration and Appeal materials of 1985 wrongful termination of bus driver (1987-90); Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction (6/15/92); National School Bus Services, Inc. Motion to Intervene (6/16/92); Plaintiffs' Motion for Further Relief (5/21/92); Plaintiffs' Motion for Temporary Restraining Order (6/3/92); "Managing Special Education in Boston: Quality and Compliance (Arthur D. Little Co.) (6/14/91); BPS' Response and Allen Monitor's Response (6/18/91); Department of Education's Response to Allen Monitor's Comments and Recommendations Regarding Arthur D. Little Study (7/3/91); Department of Education's Special Education Enrollment Report on the Boston Public Schools (6/7/91); Implementation Team (1992); BPS' Response to Disengagement Master's Draft Report # 10 (4/4/92); Student Transportation Task Force Recommendations (2/27/92); Special Education in the Boston Public Schools: A Catalyst for Total Quality Reform (3/92); Defendant's Opposition to Supplemental Disengagement Order (6/10/88); Alternative Transportation Contracts (1991); Boston Public School's Contingency Plan: Transportation of Special Needs Students (7/31/92); Correspondence, 1988; The Boston Public Schools: An Assessment of Governance, Operations and Finance (John Curry, President, Northeastern University) (July 1991).

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Box 18 **Office of the Assistant General Counsel, BPS**

Working Files, 1975 – 1989

McDonough et. al v. City of Boston et. al. Chapter 766 funding lawsuit, SJC 2384, On Appeal From A Judgment of the Superior Court – Record Appendix, 1980 – 1981; McDonough et. al. v. City of Boston C.A. 44686 - complaints, affidavits, correspondence, and memoranda, (Sept 1980 – Jan. 1981); Allen v. McDonough Action Plan (1988 – 1989) As Stipulated in Orders (7/26/87, Paragraph 15). Originals; Compliance Action Plan (7/14/89); Compensatory Services, 1980 and Further Order (8/19/80) Establishing a Court Monitor, 1979 – 1980; Attorneys' Fees, 1980; Plaintiff's Motion for a Temporary Restraining Order (10/1/80) and Defendant's Stipulation; Violations Reported by BPS, 1978 – 1980; Bilingual Psychological Services, 1976 – 1977; Chapter 766 Data by Race, District and Prototype (10/31/75) and Citywide Summary, 1976-1977; Core Evaluation Reports 10/77 – 11/77; Compensatory Services Programs 1979-1980; Monitor's Report (Ann Davidson) on Compensatory Services Program, Winter 1979/80; Compensatory Services Program, November 1978 – 1979; Compensatory Services Program, Jan 1979; Correspondence, Sept 1977 – Jan 1978.

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Box 19 **Office of the Assistant General Counsel, BPS**

Working Files, 1976 – 1991

Defendant's Motion in Support of Disengagement (4/88); Draft of Allen Monitor's Report and

Certification for Release of Federal Funds for Second Quarter FY 1989 (1/8/89); Defendant's Opposition to Definition of Violations (11/27/89); Allen Monitors' Report (with Allen Goldstein, DOE) on BPS' Compliance and Certification for Release of Federal Funds for First Quarter 1990 (1/22/90); Allen Monitor's Report (8/18/88); Disengagement Master's Report # 4 (7/31/89); Allen Monitor's Findings and Recommendations on BPS' Reporting Practices and Compliance in Speech and Language Services (6/28/88); DOE Monitoring Report for September and October (11/22/89) and Allen Monitor's Determination of BPS' Progress in Achieving Compliance for the Fourth Quarter of FY 1989 (11/3/89); Alternative Transportation Planning, 1987, 1989; DOE's Definition of Violations and Comments (Oct – Nov, 1989); Attorneys' Fees, 1987; Allen Monitor's Update on Defendant's Certification for Release of Federal Funds for Third Quarter of FY 1991 (6/24/91); Allen et. al. v. Nucci et. al., Plaintiffs-Appellees Derek Allen et. al. Application for Direct Appellate Review (6/9/86) Appeals Court # 86-667, Entered 7/19/86; SJC 86-13 Allen et. al v. McDonough et. al. v. Local 8751, United Steelworkers of America, AFL-CIO - Memorandum of Plaintiffs In Opposition To Defendant's Petition Pursuant to G.L. c. 231, sect. 118 (1) - to annul preliminary injunction granted by Superior Court (1986); Allen Monitor's Report and Certification for Release of Federal Funds for Second Quarter of FY 1991 (5/1/91); Plaintiff's and DOE's Position on Monitoring, Mar-May, 1988; Transportation Issues, 1988; Schedule for Disengagement Process (4/2/88); Disengagement Meeting Follow-Up Tasks (4/4/88 and 4/26/88); Disengagement Meetings, 3/2/88, 3/7/88, 3/28/88; Plaintiff's Brief in Support of Request for Receivership (7/16/90); Requests for Proposals for Consultant, 1990 – 1991; Outside Therapy Services, 1990; Transportation Incident Reports, 1990; Defendant's Plan for Compliance, 1977 – 1978; An Assessment of Special Service Needs As Perceived By District and School Personnel by The Boston Project (6/77); Plaintiff's Motion to Compel Compliance to Hire Special Education Substitutes (1984); BPS: Comprehensive Internal Program Review Process: A Plan to Monitor and Evaluate Special Education Programs by the Department of Student Support Services (11/82); Massachusetts Department of Education: Special Education Monitoring Standards Chapter 766/PL94-142 (9/82); Reorganization of the Special Services Department, 1979 – 1980; BPS: Special Needs Monitoring Standards, 1983 – 1984; Request of Defendant-Intervenor, BTU For Temporary Restraining Order (5/79) – Generic Teachers; Motion of Defendant-Intervenor , BTU For an Order to Compel Compliance With Consent Judgment et. al. (6/14/79) – Generic Teachers (1979); Correspondence, 1982- 1989; Correspondence, 1976 – 1977; Disengagement Master's Report # 8 (6/20/91).

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Box 20 **Office of the Assistant General Counsel, BPS
Working Files, 1976 – 1998**

Kathleen Sullivan et. al. v. Richard Zimmerman et. al – Agreement for Judgment and Judgment # 23641 (4/10/80); Court Orders 1976 – 1985; Court Orders 1986 – 1994; Liquidated Damages, Jan – Jun, 1995; Correspondence 1995 – 1998; Allen v. Nucci , Direct Appellate Review of an Order of the Superior Court – Substitute Record Appendix, # 4266 (1986); Plaintiffs' Motion to Vacate Stipulation and Motion for Attorneys' Fees (5/4/95); Compliance Certification Manual (10/31/94).

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