No. ____

In the

Supreme Court of the United States

In re

OLIVER BRUCKAUF, et al.,

Petitioners.

(full list of petitioners continued on inside cover)

On Petition for a Writ of Mandamus to the
United States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF MANDAMUS

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PETITIONERS CONTINUED

OLIVER BRUCKAUF, individually and as parent and natural guardian of E.B.;

MAYTINEE BIRD, individually and as parent and natural guardian of H.C.;

KAMOLPORN LUMMAYOS, individually and as parent and natural guardian of R.L.;

CLAUDIA RIVAS, individually and as parent and natural guardian of S.C.;

MARIA HIDALGO, individually and as parent and natural guardian of L.S.; and

PATRICK DONOHUE, individually and as parent and natural guardian of S.J.D.,

Petitioners.

QUESTIONS PRESENTED

1. Whether this Court should issue a writ of mandamus directing the U.S. Court of Appeals for the Second Circuit to rule forthwith on Petitioners' emergency motion in No. 26-523, which has been fully briefed and pending without action for over 22 days, while six medically fragile disabled students' 1:1 nursing services — without which they cannot travel to or attend their court-mandated pendency placement at iBRAIN — have been completely suspended by DOE's eight-month refusal to fund those services.

2. Whether the Second Circuit's 22-day inaction on a fully briefed emergency motion—in the face of concrete, compounding, and irreversible harm to six children whose federally-mandated pendency placement has been functionally terminated by financial starvation—constitutes the type of extraordinary cause warranting the writ of mandamus under *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367 (2004), where the district court has also denied all relief and disclaimed jurisdiction, leaving Petitioners with no forum capable of compelling compliance with

the Individuals with Disability Act's ("IDEA") automatic stay-put obligation.

PARTIES TO THE PROCEEDING

Petitioners are Claudia Rivas, Patrick Donohue, Oliver Bruckauf, Kamolporn Lummayos, Maria Hidalgo, and Maytinee Bird, each acting individually and as parent and natural guardian of their respective children: S.C., S.J.D., E.B., R.L., L.S., and H.C. — six parents and natural guardians of disabled children enrolled at the International Institute for the Brain ("iBRAIN"), a specialized educational program for students with acquired brain injuries located in New York City. Each Petitioner-student is a party to pending proceedings in the U.S. Court of Appeals for the Second Circuit in Nos. 25–2127 and 26–523.

Respondent is the U.S. Court of Appeals for the Second Circuit, whose three-judge panel in No. 26–523 is directed to rule on the Petitioners' emergency motion.

Real Parties in Interest are the New York City Department of Education ("DOE") and its former Chancellor, Melissa Aviles-Ramos, when the suit was commenced,[1] in her official capacity, the parties against whom Petitioners seek enforcement of the IDEA's stay-put provision. Also appearing as a real party in interest is the New York City Board of

[1] On January 1, 2026, Kamar Samuels was appointed as the Chancellor of the NYC DOE but has not yet been substituted in this matter.

Education. DOE is the local educational agency responsible under IDEA, 20 U.S.C. § 1401(19), for funding the pendency placements of the six Petitioner-students, including their 1:1 private-duty nursing services.

RELATED PROCEEDINGS

U.S. Court of Appeals
for the Second Circuit

***Bruckauf et al. v. Banks et al.*, No. 25–2127 (2d Cir.)** — Fully briefed merits appeal of the October 2025 denial of a preliminary injunction directing DOE to fund Petitioners' pendency placements. No oral argument date has been set. This appeal remains pending.

***Bruckauf et al. v. Banks et al.*, No. 26–523 (2d Cir.)** — Interlocutory appeal of the March 4, 2026, denial of a targeted TRO for the six students with 1:1 nursing. The emergency motion for relief was referred to a three-judge panel on March 16, 2026; no ruling was made as of the date of this Petition. This appeal remains pending and is the primary subject of the relief sought here.

U.S. District Court
for the Southern District of New York

***Bruckauf et al. v. Banks et al.*, No. 1:25-cv-05679-KPF (S.D.N.Y., Failla, J.)** — The underlying civil action in the Southern District of New York. The

pending motions include a motion to dismiss by DOE and a § 1983/*Monell* civil rights claim. The district court has denied four applications for emergency injunctive relief and, in its April 3, 2026, order, stated that it "seriously doubts its jurisdiction" to rule on the pending motion to dismiss while both interlocutory appeals are pending.

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PRELIMINARY STATEMENT

Six children with severe brain injuries have been denied access to their court-mandated school placement since March 30, 2026. Their placement in iBRAIN is established by final, unappealed administrative decisions that carry the force of law. The DOE is legally obligated, under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415(j), to fund that placement, including the 1:1 private-duty nursing services that are not a supplemental convenience but an absolute prerequisite to attendance. DOE has refused to pay.

The governing legal principles are not in dispute. In *Honig v. Doe*, 484 U.S. 305, 323 (1988), this Court held that the stay-put provision "operates as an automatic preliminary injunction," stripping school officials of "the unilateral authority they had traditionally employed to exclude disabled students" pending resolution of placement disputes. The Second Circuit confirmed in *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199 (2d Cir. 2002), that "to cut off public funds would amount to a unilateral change in placement" in violation of that provision. And in *Mendez v. Banks*, 65 F.4th 56, 60 (2d Cir. 2023)—an action involving the same parties and the same school—the Second Circuit held that where payment delays jeopardize a pendency placement, automatic injunctive relief is available with no additional showing. The DOE has not paid a single dollar for the nursing services of four of these

students for the entire 2025–2026 school year. Nursing provider B&H Medical, LLC sustained eight months of non-payment before ceasing all services on March 30, 2026. A-149–153. As a result, the children have not been able to attend iBRAIN since that date.

Petitioners have sought relief at all available levels. The district court denied emergency TRO and PI applications four times. In its order on April 3, 2026, the court declared that it "seriously doubts its jurisdiction" while two interlocutory appeals are pending. A-146–148. Petitioners' emergency motion in the Second Circuit (No. 26-523)—filed March 6, 2026, and referred to a three-judge panel on March 16—has gone unanswered for 22 days despite supplemental filings documenting the nursing cessation and its consequences. Petitioners' renewed motion for expedited consideration in No. 25–2127, filed April 6, has also gone unanswered. School resumes on April 13, 2026—six days from today.

This is an extraordinary case that warrants an extraordinary writ. *Ex parte Fahey*, 332 U.S. 258, 259–260 (1947) (cited in *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004)). The school district is refusing to fund a mandatory statutory obligation — one that Congress framed as an automatic preliminary injunction — while a district court has denied all relief, and the Second Circuit has left Petitioners' emergency motion unanswered for 22 days, leaving these children with no effective judicial protection. The practical effect of continued delay is to accomplish through nonpayment precisely what

Honig foreclosed by administrative action. This Court should direct the Second Circuit to rule on Petitioners' emergency motion forthwith.

BASIS FOR JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1651(a) (All Writs Act), which authorizes the issuance of "all writs necessary or appropriate in aid of [this Court's] respective jurisdiction[] and agreeable to the usages and principles of law." Jurisdiction lies here because the underlying cases — Second Circuit Nos. 25–2127 and 26–523 — are within the prospective appellate jurisdiction of this Court under 28 U.S.C. § 1254(1). *Cheney*, 542 U.S. at 380. When a court of appeals is the respondent, mandamus to this Court is the exclusive mechanism for compelling action. § 3932 Extraordinary Writ Review—Power, 16 Fed. Prac. & Proc. Juris. § 3932 (3d ed.). No other court has the authority to order the Second Circuit to rule, and no other court has authority over DOE's obligations to these New York City public school students. S. Ct. R. 20.1; *Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296, 309 (1989).

SUMMARY OF ARGUMENT

Three propositions, each independently sufficient, establish that the writ should be issued.

Together, they present a case for which the extraordinary writ exists.

First, the Petitioners have a clear and indisputable right to a ruling on their emergency motion. The IDEA's stay-put provision, 20 U.S.C. § 1415(j), operates as an automatic preliminary injunction requiring no additional showing — no likelihood of success, no independent showing of irreparable harm, and no discretion. *Honig*, 484 U.S. at 323. When a school district refuses to fund the 1:1 nursing services essential for disabled students to attend their pendency program/placement physically, it does more than reduce services—it effectively and unilaterally alters the students' educational placement. This is a clear and direct violation of the mandatory, self-executing statutory protections that Congress enacted under the IDEA. *Murphy*, 297 F.3d at 199. When that funding failure jeopardizes the placement, automatic injunctive relief is available under binding Second Circuit precedent. *Mendez*, 65 F.4th at 60. Here, placement is not merely at risk—nursing services have completely stopped; the provider has stopped providing services after eight months without payment, and the children here cannot attend school without this necessary related service. The Second Circuit's responsibility to promptly decide a fully briefed emergency application becomes vital when ongoing irreparable harm is occurring and further delay would effectively nullify IDEA safeguards intended to protect these rights. In these circumstances, timely judicial action is not

merely justified—it is crucial to uphold the rights that Congress sought to protect. On the present record — fully developed and presenting a directly applicable legal standard — the panel's 22-day inaction is increasingly difficult to reconcile with the application's emergency character.

Second, the Petitioners have no other adequate means. The district court has denied four rounds of emergency relief and then, in its April 3, 2026, order, declared that it "seriously doubts its jurisdiction" to act while the interlocutory appeals are pending. A-146–148. There has been no adverse ruling from the Second Circuit to appeal. One cannot appeal the absence of action. The IDEA contains no provision authorizing another Federal Court to oversee a circuit court's management of its own docket. Congress created no administrative pathway to compel a court of appeals to rule on a pending motion. Mandamus to this Court under 28 U.S.C. § 1651(a) is the sole remaining legal mechanism. § 3932 Extraordinary Writ Review—Power, 16 Fed. Prac. & Proc. Juris. § 3932 (3d ed.).

Third, the writ is appropriate under the circumstances. This Petition does not ask this Court to substitute mandamus for an ordinary appeal or to second-guess a ruling that went against Petitioners. It asks this Court to direct the Second Circuit to exercise the jurisdiction it holds—to rule on an emergency motion that has been ripe for 22 days while six disabled children remain locked out of school, regressing without their therapeutic

programming and facing medical risks that need not be borne. The balance of equities is not close: DOE suffers no cognizable harm from being directed to comply with a legal obligation it already owes; the children suffer irreversible, cumulative, and accelerating harm with each passing school day. Congress enacted the stay-put provision as an automatic injunction precisely because it understood that delay is its own form of harm to disabled children. *Honig*, 484 U.S. at 323–327. Where the combined effect of the district court's denials and appellate inaction has left Congress' automatic injunction with no practical enforcement mechanism, this Court's intervention under the All Writs Act is both appropriate and warranted.

The expected objection—that Petitioners should wait for the Second Circuit to act in the ordinary course—fails on both the facts and the law. The factual record is complete; no additional briefing, hearing, or development is needed. The legal standard from Mendez applies directly. Spring break ends April 13, 2026—if the Second Circuit does not act, these children will start a new school week unable to attend iBRAIN. By the time the Second Circuit rules in No. 25–2127, the 2025–2026 school year could be mostly or entirely lost. A remedy after harm is not adequate. Mandamus is designed for urgent cases like this, providing relief before irreparable injury occurs.

STATEMENT OF THE CASE

A. The IDEA's Stay-Put Provision: Congress' Guarantee of Educational Stability for Students with Disabilities.

IDEA guarantees disabled children a "free appropriate public education" tailored to their individual needs. 20 U.S.C. § 1400(d)(1)(A). Recognizing that protracted administrative and judicial proceedings could deprive disabled children of services for years, Congress enacted the "stay-put" provision: "during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement." 20 U.S.C. § 1415(j) (emphasis added).

In *Honig v. Doe*, 484 U.S. 305 (1988), this Court gave that mandatory language its full natural force. Congress had found that school officials were "exploit[ing] educational expertise and administrative process to defuse parental challenges to the status quo," *id.* at 327, leaving disabled children without services while proceedings churned on for years. Congress responded by stripping schools of "the unilateral authority they had traditionally employed to exclude disabled students." *Id.* at 323. The result is a provision that "operates as an automatic preliminary injunction" — self-executing,

dependent on no court order, and exempt from the traditional four-part equitable showing. *Id.* The word "shall" means shall.

The Second Circuit has faithfully applied *Honig* and extended its logic. *Zvi D. by Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982), established that the provision operates as an automatic preliminary injunction. *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199 (2d Cir. 2002), confirmed that "to cut off public funds would amount to a unilateral change in placement" — making the funding obligation coextensive with the placement obligation. *Ventura de Paulino v. New York City Dep't of Educ.*, 959 F.3d 519, 532 (2d Cir. 2020), further confirmed that a school district may not accomplish indirectly, through funding manipulation, what it cannot accomplish directly. And *Mendez v. Banks*, 65 F.4th 56, 60 (2d Cir. 2023), confirmed that where payment delays threaten a child's pendency placement, automatic injunctive relief is available — no separate four-factor showing is required. These are the rules of this circuit. DOE's conduct in this case implicates each of them.

B. The Petitioner-Students and Their Pendency Placements at iBRAIN.

The six Petitioner-students—S.C., S.J.D., E.B., R.L., L.S., and H.C.—have each sustained catastrophic brain injuries requiring intensive, specialized therapeutic educational programming in a

medically supervised setting. Each has been placed at iBRAIN under final administrative decisions: Impartial Hearing Officer ("IHO") Findings of Fact and Decisions ("FOFD"), and for several students, State Review Officer ("SRO") decisions confirming those placements. DOE has not appealed the controlling administrative decisions for any of the six students. The pendency placements are established, operative, and binding.

iBRAIN is not a typical school. It serves students with severe neurological injuries that require constant nursing supervision throughout the school day. Many students cannot walk independently. Some require ventilator management or suction during programming. Each of the six students requires a 1:1 private-duty nurse to travel to and from school and participate safely in school-day activities. A-63–82. This nursing requirement is not aspirational — it is an essential condition of attendance. Without a 1:1 nurse, these students cannot go to school. This is not a matter of educational policy; it is a medical reality documented in the record.

The pendency basis for each student is outlined in the Declaration of Zeal Patel ("Patel Decl."), No. 26-523, Dkt. 13.2 (filed March 12, 2026). Three distinct DOE rationales emerge from the record, addressed in Argument Point II.D:

S.C. (parent: Claudia Rivas) and **S.J.D.** (parent: Patrick Donohue): Each student's pendency is established by a current, unappealed SRO decision

affirming placement at iBRAIN with 1:1 private-duty nursing for the 2025–2026 school year. Patel Decl. ¶¶ 600–715 (SRO Decision 24–058; IHO Pendency Order Sept. 8, 2025). DOE made partial payments through December 31, 2025, and then stopped, citing a "substantial program increase" theory under *Moonsammy*.[1] A-136–139; Patel Decl. ¶¶ 571–580, 894–961. The SRO, whose authority DOE invokes, has already reviewed and affirmed the current placement.

E.B. (parent: Oliver Bruckauf) and **R.L.** (parent: Kamolporn Lummayos): Each student's pendency derives from an IHO FOFD awarding placement at iBRAIN with 1:1 nursing. Patel Decl. ¶¶ 607–611 (SRO Decision No. 23–238). The DOE disputes whether the operative administrative decisions extend to the 2025–2026 school year. A-131–133; Patel Decl. ¶¶ 894–961. DOE has paid zero dollars for either student's nursing for the entire 2025–2026 school year. A-130–134; Patel Decl. ¶¶ 571–580.

L.S. (parent: Maria Hidalgo): Pendency established by the IHO FOFD. Patel Decl. ¶ 35 (DPC filed; pendency discussed throughout). At the March 4 hearing, Judge Failla relayed DOE's representation that L.S.'s nursing had been "authorized through April 30" and was "in process." A-130–134. Services

[1] *Moonsammy et al. v. Aviles-Ramos,* 25-cv-05923 (AT) (S.D.N.Y.) is a district court case that is irrelevant to the students' pendency placements or funding in this matter.

ceased on March 30, 2026, before the authorization period expired. A-55–58.

H.C. (parent: Maytinee Bird): Pendency established by IHO FOFD. Patel Decl. ¶¶ 628–655 (IHO FOFD, Case No. 295762). DOE declined to fund nursing, allegedly because iBRAIN had not provided the requested programmatic information. A-130–134; Patel Decl. ¶¶ 894–961. Services ceased on March 30, 2026, regardless of that asserted deficiency. A-55–58.

In each instance, the student's enrollment in iBRAIN with 1:1 nursing services was in effect at the commencement of the proceedings from which these appeals arise. Under 20 U.S.C. § 1415(j), this enrollment defines the pendency obligation by operation of law. Patel Decl. Nursing services are provided by B&H Medical, LLC ("B&H"), whose COO testified at the March 4, 2026, evidentiary hearing that B&H had carried eight months of unpaid services on credit and could not continue indefinitely. A-123-128. On March 30, 2026, services ceased for all six students. Since then, the children have not been able to attend iBRAIN.

C. DOE's Non-Payment of Pendency Obligations.

As of February 12, 2026, the DOE owed the Petitioners $9,718,679.41 in outstanding pendency obligations for the 2025–2026 school year. ECF No. 46 (Feb. 12, 2026, Status Report). Of that sum, $7,375,319.60 fell into zero-payment categories —

categories for which DOE had remitted nothing. *Id.* The zero-payment categories included nursing services for four of the six students. Counsel's argument at the March 4 hearing was stark: Four of the six nursing students have had zero payments since July. Not a dispute over increases — zero. A-127–128.

DOE's student-specific rationales for nonpayment are documented in the district court record and addressed in Argument Point II.D. As set forth therein, whatever the merits of those rationales on the underlying placement question, none of them explains or justifies allowing students' placements to collapse before the Second Circuit rules. A-130–138. Judge Failla recognized the force of the Petitioners' position in real time but declined to act. At the March 4 hearing, she warned DOE's counsel directly:

> "Ms. Roc, you should not take solace and you should not take comfort in what Mr. Jacobowitz said because, at some point, they are going to pull that trigger and the problem is, I have to make the decision before they do."

A-133–134.

The court subsequently declined to make this decision. B&H "pulled the trigger" on March 30, 2026—eleven days after that warning—and the children lost their ability to attend school. *See* A-149–153.

D. District Court Proceedings: Four Denials and a Disclaimer of Jurisdiction.

This litigation began in the Southern District of New York in the fall of 2025. Judge Katherine Polk Failla denied emergency TRO/PI relief in October 2025. Petitioners immediately appealed, giving rise to No. 25–2127, a fully briefed merit appeal pending in the Second Circuit.

On February 20, 2026, as the nursing crisis escalated, Petitioners filed a targeted TRO motion specific to the six nursing students. The district court held an evidentiary hearing on March 4, 2026. B&H's COO testified under oath. The threat of nursing cessation was not hypothetical; it was documented, imminent, and based on eight months of zero payment. A-123-128. Judge Failla denied the TRO. Petitioners immediately filed a second interlocutory appeal—No. 26–523 in the Second Circuit.

On April 2, 2026, with nursing services already cut off, Petitioners moved the district court for a contempt finding against DOE and for expedited discovery on their § 1983 and *Monell* claims. ECF No. 52. On April 3, 2026, Judge Failla denied both applications. A-146–148. On the contempt motion, the court found "no court order ha[d] been violated"—because the court had itself declined to issue any order requiring DOE to fund nursing. *Id.* On the discovery application, the court stated that it "seriously doubts its jurisdiction to resolve the motion

to dismiss while those appeals are pending." *Id.* The district court thus created a self-reinforcing loop: it will not issue an order because the appeals are pending; the appeals have not produced an order; therefore, there is nothing to enforce. The children remain out of school.

E. The Emergency Interlocutory Appeal and the Second Circuit's Silence.

No. 26–523 was docketed in the Second Circuit on March 6, 2026 — the day Petitioners filed their interlocutory appeal from the March 4 TRO denial. The Petitioners simultaneously moved for emergency relief, requesting that the court order DOE to fund nursing pending resolution of the appeal. On March 16, 2026, a single judge of the Second Circuit referred the matter to a three-judge panel and declined to grant interim relief personally. This referral transferred full authority to the panel.

The panel has not acted. On April 2, 2026, Petitioners' counsel filed a supplemental trigger letter (DktEntry 52.1, No. 26–523) (A-149–153), advising the panel that the nursing cessation previously identified as a foreseeable consequence of non-payment was now occurring. The letter stated: "[T]he nursing interruption previously identified as the foreseeable consequence of non-payment is now occurring in real time." A-149–153.

The letter further advised that each additional school day without nursing services was "another day

these medically fragile students cannot access their pendency placement at iBRAIN" — harm that is "concrete, cumulative, and not fully compensable through retrospective relief alone." A-149-153. The letter cited *Mendez v. Banks*, 65 F.4th 56 (2d Cir. 2023), and *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981). A-152–153. The panel did not respond.

On April 6, 2026 — one day before this Petition — Petitioners filed a renewed Fed. R. App. P. 27 motion for expedited consideration in No. 25–2127 (DktEntry 45.2), requesting a ruling no later than April 10 — three days before school resumes after spring break. That motion has also received no response. As of the date of this Petition, the three-judge panel in No. 26–523 has had over 22 days, four submissions, and a complete factual record to aid it in deciding the outstanding motion, yet nothing has issued. School resumes in six days, and students' regression will worsen.

F. The Cessation of Nursing and the Accelerating, Irreversible Harm to the Students.

As of March 30, 2026, all six students lost their 1:1 nursing services. They have been unable to attend iBRAIN since that date — eight school days as of the filing of this Petition, with more to follow when the school year resumes on April 13. The harm is not abstract and is not reversible. Children with severe acquired brain injuries require uninterrupted

therapeutic educational programming for neurological stability and development; even brief interruptions can cause regression of motor skills, loss of communication skills, and diminished feeding skills. A-63–82. Each day the students are away from iBRAIN increases the likelihood that they will never recover—the risk of irreversible regression increases exponentially since neurodevelopmental progress is time and disruption-sensitive. No after-the-fact judicial order can restore lost therapeutic opportunities. The placement's institutional infrastructure also suffers real harm. B&H provided nursing services on credit for 8 months, but care has now been withdrawn. Even if DOE pays immediately, it is uncertain whether services can be restored quickly enough to salvage the 2025–2026 school year. Prolonged gaps make restoration harder and reduce the effectiveness of any relief.

REASONS FOR GRANTING THE WRIT

I. THE THREE-PART MANDAMUS STANDARD IS SATISFIED, AND THIS CASE IS PRECISELY THE "EXTRAORDINARY CAUSE" THE WRIT WAS DESIGNED TO REACH.

The writ of mandamus is "a drastic and extraordinary remedy, reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. at 259–260 (cited in *Cheney*, 542 U.S. at 380). Three

conditions must be met: (1) the petitioner must have "no other adequate means to attain the relief he desires"; (2) the petitioner's "right to issuance of the writ [must be] clear and indisputable"; and (3) "the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Cheney*, 542 U.S. at 380–381 (citing *Kerr v. U. S. Dist. Ct. for N. Dist. of California*, 426 U.S. 394, 403 (1976)). These "hurdles, however demanding, are not insuperable." *Cheney*, 542 U.S. at 381.

The writ reaches circumstances that defy the ordinary remedial process—where, as this Court held in *Will v. United States*, 389 U.S. 90, 95 (1967), a lower court's actions would cause injury that a subsequent appeal cannot repair. It reaches cases involving a "clear abuse of discretion," *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953), and situations where the government is about to accomplish by delay what it cannot accomplish by law. *See Ex parte Republic of Peru*, 318 U.S. 578, 585 (1943). The boundaries of the writ "are not confined to those situations in which it has previously been issued." *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980). The standard is whether, based on the facts presented, the three conditions are met. Here they are.

The All Writs Act's mandate — to issue writs "necessary or appropriate in aid of [the Court's] respective jurisdiction[]," 28 U.S.C. § 1651(a) — authorizes this Court to "confine [a lower court] to a

lawful exercise of its prescribed jurisdiction." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943) (cited in *Cheney*, 542 U.S. at 380). Mandamus "may issue simply because denial of immediate review may cause injury that cannot be repaired by a subsequent appeal." *Id.* That is exactly the situation here: the harm to these children from continued exclusion is daily, compounding, and irreversible. No appellate ruling at the close of the proceedings will restore the therapeutic programming that the students are losing now.

The expected counterargument—that mandamus is exceedingly rare and, therefore, presumptively unavailable—is circular. The writ is rare because truly extraordinary circumstances are rare. It is not rare because courts of appeal are categorically insulated from supervision. When a court of appeals refuses to act in the face of a fully briefed emergency motion, while disabled children are excluded from their court-mandated placement in violation of a federal statute, and while no other court can provide relief, the rarity of the writ says nothing about its availability. Rather, it says that the circumstances before this Court are unusual, which is precisely the point.

The irreparable harm here is not prospective—it is present and accelerating. The legal right is not contingent—it is established by this Court's own precedent in *Honig* and the Second Circuit's binding decisions in *Murphy*, *Ventura de Paulino*, and *Mendez*. This is not a case where the underlying legal

right is uncertain or the facts are disputed. This is a case in which the legal standards are settled, the factual record is complete, the harm continues, and the only thing missing is a ruling from a court with jurisdiction to issue one.

When the respondent is a court of appeals and not a district court, this Court's jurisdiction to issue mandamus rests on the prospect of future jurisdiction under 28 U.S.C. § 1254(1). *Cheney*, 542 U.S. at 380; § 3932 Extraordinary Writ Review—Power, 16 Fed. Prac. & Proc. Juris. § 3932 (3d ed.). And where the court of appeals is the respondent, mandamus is the *exclusive* vehicle—there is no statute, no rule, and no doctrine by which a litigant can compel a circuit court panel to rule on a pending motion except by seeking the extraordinary writ from this Court. *Id.* The three *Cheney* conditions are satisfied, as shown below.

II. PETITIONERS HAVE A CLEAR AND INDISPUTABLE RIGHT TO A RULING ON THEIR EMERGENCY MOTION.

A. The IDEA's Stay-Put Provision Creates a Mandatory, Self-Executing Right to Pendency Placement Maintenance That Requires No Court Order and No Independent Equitable Showing.

The underlying legal right is as clearly established as any other federally protected right. The IDEA commands that "the child shall remain in

the then-current educational placement" during the pendency of any proceedings. 20 U.S.C. § 1415(j) (emphasis added). Congress' choice of the mandatory "shall" was deliberate and was given its full meaning by this Court in *Honig*: the provision "operates as an automatic preliminary injunction," 484 U.S. at 323, one that does not require a court order to take effect and does not require any party to show a likelihood of success on the merits, irreparable harm, or balance of equities. *Id.*; *Zvi D. by Shirley D.*, 694 F.2d at 906. The provision is self-executing as a matter of Federal Law.

The statute's protection is broad and includes both funding and physical placement. In *Murphy*, the Second Circuit held that "to cut off public funds would amount to a unilateral change in placement." 297 F.3d at 199. A district that stops paying for the services without which a student cannot attend the placement has changed the placement in the most direct sense possible — it has made attendance impossible. *Ventura de Paulino*, 959 F.3d at 532, confirmed this principle: the district may not accomplish indirectly, through financial leverage, what it cannot accomplish directly by administrative action. And *Mendez* specifically addressed payment failures that "jeopardize" a pendency placement and held that automatic injunctive relief is available. 65 F.4th at 60. Here, placement has not only been jeopardized, but nursing services have completely stopped, making it impossible for the students to attend their educational placement.

Because the stay-put provision is self-executing and mandatory, DOE's obligation to fund nursing exists independent of any court order. The district court's April 3rd order denied a contempt motion on the grounds that "no court order ha[d] been violated." A-146–148. But the absence of a contempt-ready injunction does not negate the underlying federal right—it makes the appellate panel's silence more consequential, not less. The stay-put provision does not require a prior court order to trigger the district's compliance obligation. *Honig*, 484 U.S. at 323. DOE's obligation arose automatically from the existence of operative pendency determinations. This Court's intervention is needed specifically because no court order has yet been entered to enforce that obligation — and without one, it remains unenforceable in practice.

B. DOE's Refusal to Fund Nursing Is a Functional Termination of Placement, Not a Permissible Exercise of Administrative Discretion.

DOE claims that its non-payment is a temporary hold pending administrative review, but this does not match the facts. Four nursing students received zero payments for the entire 2025–2026 school year. DOE made no interim payment offers, escrow, or accommodations. When warned that services would end without payment, the DOE did nothing to prevent it, did not seek an administrative stay or propose

solutions, and then opposed contempt in court. A-127–129.

Honig condemned the use of procedural and financial leverage to undermine parental challenges. 484 U.S. at 327. The stay-put obligation is automatic, and DOE's eight months of zero payments and procedural objections are exactly what *Honig* forbids. This conduct is not "administrative dispute resolution," but a prohibited unilateral placement change, as *Honig* confirms.

Mendez forecloses the DOE's argument. Payment delays that "jeopardize" a pendency placement require automatic injunctive relief. 65 F.4th at 60. Here, eight months of zero payments ended nursing services entirely. Students cannot attend school. If jeopardizing a placement triggers relief under *Mendez*, then destroying a placement does so *a fortiori*. Second Circuit law offers no basis for DOE's position.

C. On a Complete Record with Ongoing Irreparable Harm and a Directly Applicable Legal Standard, Continued Nonaction on a Ripe Emergency Motion Is Untenable.

The Second Circuit received the Petitioners' emergency motion on March 6, 2026, supported by a complete factual record developed at the March 4 evidentiary hearing. The panel received supplementary submissions on April 2—the trigger

letter confirming nursing cessation—and again on April 6—the renewed motion for expedited consideration. Four distinct submissions over 22 days have yielded nothing from the panel. A-149–153.

The court's responsibility to resolve a ripe emergency application increases proportionally to the irreversibility of the harm its continued silence produces. When the factual record is complete, the legal standard is settled, no further briefing has been requested, and the harm is ongoing and accelerating, the circuit court's obligation to act becomes correspondingly urgent. *See In re Austrian, German Holocaust Litig.*, 250 F.3d 156, 162–163 (2d Cir. 2001) (recognizing mandamus as available where inaction occasions "inappropriate delay" in the face of claims demanding swift resolution).

Mendez is as close to on-point precedent as the Second Circuit offers—non-payment to the same school, jeopardizing placement, decided three years ago by the very circuit now called to act. The factual record is fully developed. No hearing is needed. No additional briefings have been requested. DOE's student-specific defenses, addressed in Point II.D *infra*, do not change this calculus: whatever their merit on the underlying question, they do not explain why the panel should remain silent while the students' placements collapse before a ruling is issued. In the present record, continued inaction is increasingly difficult to reconcile with the emergency nature of the application and the ongoing, irreversible

harm that is being documented to the panel in real time.

D. DOE's Student-by-Student Defenses Are Each Legally Unavailing and Cannot Justify Eight Months of Zero Payment.

DOE has implemented shifting, non-payment-related rationales for its nonpayment — arguing before the district court that each student presented a different reason for withholding funding. The court record documents these positions in detail. A-130–138. Each fails as a matter of law. Examining them confirms, rather than undermines, that the Petitioners' right to a ruling is clear and indisputable.

S.C. and S.J.D. — the Moonsammy defense. For S.C. and S.J.D., DOE's counsel stated at the March 4 hearing:

> "[I]t's my understanding that we are litigating what they are entitled to at the administrative level and that the payments that we have made so far have been substantial, and because there has been such a substantial increase in their programs that we would need to—you know, in accordance with the *Moonsammy* decision, we would need to see what occurs at the administrative

> level to determine what is required for DOE to pay as to their nursing."

A-136.

This theory is not valid here. The *Moonsammy* framework, to whatever extent it survives scrutiny, addresses situations in which a placement represents a substantial new service that the SRO has never reviewed. *Mackey ex rel. Thomas M. v. Bd. of Educ. For Arlington Cent. Sch. Dist.*, 386 F.3d 158, 160–161 (2d Cir.), *supplemented sub nom. Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist.*, 112 F. App'x 89 (2d Cir. 2004). For S.C. and S.J.D., the SRO had already reviewed and affirmed their then-current educational placements, including 1:1 nursing, in decisions that DOE did not appeal. There is nothing left for administrative review. Whatever *Moonsammy* may require in other circumstances, it does not require a school district to ignore an SRO decision that has already answered the question of non-payment, to justify continued non-payment while six students remain out of school.

E.B. and R.L. — the "no operative order" defense. For E.B. and R.L., DOE asserted that the operative SRO decisions covered only the prior school year and that no new interim order had been issued for 2025–2026, leaving no enforceable pendency obligation. A-130–134. This argument conflates the administrative order question with the pendency question. The IDEA's stay-put provision does not require a freshly issued order for each school year—it requires only that proceedings be "pending" and that the student

have a "then-current educational placement." 20 U.S.C. § 1415(j). Both requirements were met. E.B. and R.L. were enrolled in iBRAIN with nursing services at the beginning of the proceedings; proceedings remain pending; the placement is therefore protected by the operation of law.

Moreover, the February 12, 2026, status report filed by Petitioners' counsel listed E.B.'s nursing as "N/A" (denoting a zero-payment category), ECF No. 46; DOE took advantage of this at the March 4 hearing. A-130–134. However, the discrepancy reflects a reporting categorization, not a concession that there is no pendency obligation. Whatever the status report's characterization, the operative legal standard is the student's then-current educational placement as of the commencement of proceedings—and E.B. was enrolled at iBRAIN with 1:1 nursing. Withholding all payments for an entire school year cannot be justified because of a dispute over how a report is categorized.

H.C. — the "missing information" defense. DOE declined to fund H.C.'s nursing services because it alleged iBRAIN had failed to provide programmatic information that DOE claimed was necessary to process the payment. A-130–134. This defense fails in two respects.

First, IDEA does not condition the stay-put obligation on the school district's satisfaction with programmatic documentation. The DOE's obligation to fund the students' 1:1 nursing as an IDEA-related service stems from each student's operative pendency

placement/program in effect when their due process proceedings under IDEA were commenced—not from the school district's administrative satisfaction. *Honig*, 484 U.S. at 323.

Second, if DOE required information from iBRAIN, the proper mechanism was to request it promptly at the start of the school year—not to withhold all payment for eight months and then raise the information gap as a litigation defense when the harm is complete. The IDEA's pendency obligation is triggered by the operative administrative determination, not by a school district's satisfaction with programmatic paperwork submitted by a private provider. *See Honig*, 484 U.S. at 323.

If the DOE needed documentation, the appropriate course was to request it at the beginning of the school year and, if iBRAIN failed to comply, to pursue that dispute through proper channels — not to withhold all funding for eight months and invoke the information gap as a litigation defense only after nursing services have ceased and the student cannot attend school. Whatever information DOE claims was outstanding does not negate H.C.'s pendency right, nor can it justify the result that the child now suffers: exclusion from a court-mandated educational placement because a school district chose to withhold all payments while a documentation dispute smoldered.

L.S. — the "authorization in process" defense. At the March 4 hearing, Judge Failla relayed DOE's representation regarding L.S.: "With respect to L.S., I

am told that payments [have] been authorized through April 30. I've been told that it's in process." A-158. The court noted that it would "not go to mat on L.S." on that basis. *Id.* Notwithstanding that representation on the record—and notwithstanding whatever internal authorization DOE claimed was in process—L.S.'s nursing services ceased on March 30, 2026, along with all five other students, before the represented authorization period had even expired. A-149–153. A representation that funding is "in process" cannot serve as a defense against the undisputed fact that services have ceased and the child cannot attend school.

Taken as a whole, DOE's student-specific defenses share a common feature: each is a rationale for why DOE need not pay, rather than an engagement with the question of what happens to these children when it does not. The IDEA's stay-put provision answers that question: it prohibits the result DOE has achieved, regardless of the procedural framing DOE employs to achieve it. *Honig*, 484 U.S. at 327. The right to a ruling on each of these students' claims is clear and indisputable.

E. The Second Circuit's Inaction Places It in Direct Conflict with This Court's Holding in *Honig v. Doe*, Compounding the Case for the Writ.

The right to a ruling is clear, and the need for a writ is compelling, because the Second Circuit's delay

is producing the harm that *Honig* was meant to prevent. *Honig's* decision was intended to stop school districts from using "procedural process and financial leverage" to deny disabled children their placements during disputes. 484 U.S. at 327. Congress meant for the stay-put provision to operate automatically, ensuring that this Court's mandate would not depend on expedited judicial intervention. However, neither the district court nor the Second Circuit has enforced the directive established in *Honig*, resulting in the DOE's continued non-compliance for eight months.

The *Cheney* criteria are met. The statutory right to maintenance of pendency placement is confirmed by Congress and this Court in *Honig*, 484 U.S. 305. Second Circuit precedent in *Murphy* and *Mendez* shows that funding failures trigger automatic relief. The panel's inaction, as harm continues, satisfies the extraordinary circumstances required for the writ. The right to a ruling on the Petitioners' emergency motion is clear and indisputable.

III. PETITIONERS HAVE NO OTHER ADEQUATE MEANS TO OBTAIN THE RELIEF THEY SEEK.

A. The District Court Has Denied All Relief and Affirmatively Disclaimed Jurisdiction.

The requirement that the petitioner show "no other adequate means to attain the relief desired,"

Mallard, 490 U.S. at 309, is conclusively satisfied. All available trial-level forums have been exhausted.

The district court denied requests for a temporary restraining order and preliminary injunction relief in October 2025, targeted temporary restraining order relief in March 2026, relief from contempt in April 2026, and expedited discovery. Its April 3 order stated that it "seriously doubts its jurisdiction" to act while interlocutory appeals are pending. A-146–148. This declaration makes clear that the district court will not act, thereby barring itself from serving as a forum for these children's claims.

Supreme Court Rule 20.1 requires a showing that **"adequate relief cannot be obtained in any other form or from any other court."** Each of the district court's denials and its April 3rd disclaimer confirms it is unable or unwilling to grant the relief sought. Collectively, these rulings foreclose the district court as a forum to obtain such relief, leaving no plausible avenue to secure the nursing-funding order after eight months of litigation and four applications.

B. There Is No Order from the Second Circuit to Appeal; One Cannot Appeal the Absence of a Ruling; and Mandamus Is the Only Mechanism to Compel a Court of Appeals to Act.

The Second Circuit has not issued an order in No. 26–523, leaving nothing to appeal. The Federal Rules of Appellate Procedure provide ways to appeal decisions, but no means to force a panel to decide. There is no statute permitting review by another court of appeals or en banc reconsideration of a non-ruling. Thus, mandamus to this Court under 28 U.S.C. § 1651(a) remains the exclusive option. § 3932 Extraordinary Writ Review—Power, 16 Fed. Prac. & Proc. Juris. § 3932 (3d ed.).

This case differs from cases like *Roche* and *Allied Chemical*, in which mandamus was denied because an appealable adverse ruling existed. Here, there is no ruling or order to review—petitioners seek appellate review, not to bypass it. Mandamus is meant for precisely this situation.

S. Ct. R. 20.3 requires a mandamus petition to specify why relief is unavailable elsewhere. Only this Court can intervene over DOE's obligations and pending motions, reinforcing the court's vital role in protecting rights and ensuring justice.[2]

---

[2] The same analysis applies to the renewed motion for expedited consideration in No. 25-2127, which will resolve the placement dispute. Until then, the stay-put provision maintains student placement. The panel's lack of a briefing or argument schedule—alongside its failure to expedite—worsens the harm from No. 26-523 and independently shows no other adequate means exist. Mandamus is the only way to compel action in either case.

C. Each School Day of Continued Exclusion Is Irreversible Harm That No Retrospective Remedy Can Compensate.

The inadequacy of alternative means is most vivid when considered in terms of what happens to these children with every additional day that the Second Circuit remains silent. "When the practical effect of [denying interlocutory review] is to preclude any review whatsoever," intervention is required. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981). The practical effect of waiting—whether a week, a month, or until the Second Circuit reaches the merits in No. 25–2127—is that these children will have lost a significant portion or the remainder of the 2025–2026 extended school year. No court order can undo that loss.

The irreversibility of harm operates at three distinct levels.

First, each missed day of therapeutic programming is gone. Physical therapy, occupational therapy, speech-language therapy, and specialized instruction must be provided consistently to be effective for children with acquired brain injuries. An interrupted course of treatment is not equivalent to a delayed one. The neurodevelopmental windows targeted by iBRAIN's programming do not pause when courts deliberate. A-63–82.

Second, the absence of nursing care during this period poses direct medical risks. Children with

severe brain injuries who lose structured and medically supervised school programming face documented regression risks, including loss of motor function, communication ability, and feeding skills, which may not be fully recoverable. *Id.*

Third, B&H's suspension of services raises serious practical questions about whether nursing services can be reestablished quickly enough to matter for the rest of the school year. Rebuilding this infrastructure is time-consuming, and prompt court action is necessary to fulfill the court's duty to safeguard these children's well-being.

D. The Argument That Petitioners Should Wait for the Second Circuit to Act in Ordinary Course Is Legally and Practically Untenable.

DOE's obvious counterargument to this Petition is that Petitioners should wait for the Second Circuit to rule and let the usual appellate process play out, making mandamus premature. This fails for three reasons.

***First,* waiting causes harm.** Each school day without nursing care means lost programming, increased medical risk, and irreversible developmental harm. School resumes April 13, 2026. Even if the Second Circuit acts by April 12, fifteen school days will have been missed. Delayed remedies do not address ongoing harm. *See Carson*, 450 U.S. at 84.

Second, **the Second Circuit has a complete record**. The record includes the March 4 hearing, B&H's COO testimony, the February 12 status report on $9.7 million owed, the April 2 trigger letter, and the April 6 renewed motion. A-149–153. *Mendez* supplies the legal standard. The panel's 22-day silence on an emergency application is unjustified. There is nothing left to wait for.

Third**, Congress made the stay-put provision self-executing because delay harms disabled children.** *Honig* confirms this. When district court denials and appellate silence nullify Congress' automatic injunction and benefit DOE, ordinary process has failed. This Court's intervention under 28 U.S.C. § 1651(a) is necessary in these circumstances. 484 U.S. at 323–327.

IV. THE WRIT IS APPROPRIATE UNDER THE CIRCUMSTANCES.

A. This Petition Seeks to Compel Action, Not to Substitute Mandamus for an Adverse Ruling—the Textbook Case for Mandamus Against a Court of Appeals.

The usual concern that mandamus would bypass proper appellate review does not apply here. Petitioners are not contesting a losing ruling or asking this Court to decide the merits already addressed by the Second Circuit. Instead, they seek

an order directing the Second Circuit to rule on a pending motion. This is not a substitute for an appeal; it is mandamus in its classic form—compelling a lower court to exercise its jurisdiction. *Allied Chemical Corp.*, 449 U.S. at 35; § 3932 Extraordinary Writ Review—Power, 16 Fed. Prac. & Proc. Juris. § 3932 (3d ed.).

The writ is narrow in scope. It does not ask this Court to decide whether DOE must pay, nor does it ask the Court to decide the merits of No. 25–2127 or No. 26–523. It only asks the Second Circuit, which has jurisdiction and a fully briefed motion, to rule. Once the Second Circuit acts, normal appellate procedures resume. If the emergency motion is granted, DOE funds nursing and the children return to school. If denied, Petitioners have a ruling to appeal. Both outcomes are better than the current situation, in which six children remain out of school because the circuit court has not acted. The writ turns inaction into a decision, restoring the proper appellate process.

B. Congress' Mandatory Command in the IDEA Cannot Be Rendered Illusory by the Combined Effect of District Court Denials and Appellate Inaction.

Honig v. Doe was a landmark decision. Congress made the stay-put provision mandatory and self-executing to prevent administrative delay from depriving disabled children of their statutory rights.

484 U.S. at 323–327. This "automatic preliminary injunction" operates without waiting for judicial intervention. *Id.* at 323. However, in this case, the expectation that the courts will enforce these rights when parents seek help has not been met.

DOE has used financial starvation to achieve what *Honig* forbade: children out of school, pendency placements ended, regression, and no court order for DOE compliance. If an IDEA right cannot be enforced in the school year, it becomes a retroactive damage claim, contrary to the intent of Congress. An automatic injunction requires mandamus to ensure it operates as designed. Statutory rights must be enforceable. *Honig* confirmed Congress' intent for a self-enforcing stay-put obligation. Whether exclusion is administrative or financial, the outcome—disabled children unlawfully kept out of school without court action—is the same. *Honig's* logic demands the same response.

C. The Balance of Equities Overwhelmingly Favors the Writ: DOE Suffers No Cognizable Harm from Being Required to Comply with Existing Legal Obligations.

The writ is justified because DOE does not face actual harm in complying with its existing legal obligation to fund nursing services for these students—an obligation confirmed by unappealed administrative decisions and this Court's holding in

Honig and the Second Circuit's decisions in *Murphy* and *Mendez*.

The enforcement of DOE's obligation is not a burden; budgetary inconvenience does not outweigh the writ, especially since the DOE initially secures federal funding by promising to adhere to the IDEA's substantive and procedural safeguards, including the protection of disabled students' right to a free appropriate public education, pendency, due process, and access to necessary services.

However, the six students here are suffering irreversible harm every day. Students with traumatic brain injuries who miss their therapeutic programming regress quickly—they lose motor, communication, and feeding skills—as documented in the district court record. A-63–82. Retroactive remedies cannot restore lost opportunities or school years.

The public interest supports the writ. Congress enacted IDEA's stay-put provision to protect disabled children from delays. *Honig*, 484 U.S. at 323–327. When court denials and inaction nullify Congress' automatic injunction, intervention preserves the integrity of Federal Law. *Carson*, 450 U.S. at 84. The writ restores, not disrupts, justice.

D. The Cumulative, Accelerating, and Irreversible Nature of the Children's Harm Establishes the Extraordinary Character of This Cause.

Extraordinary writs are designed for rare and unique circumstances, and this situation is a prime example. Six children suffering from severe brain injuries have been denied access to their court-approved therapeutic school because the DOE refuses to fund their placement. Despite repeated emergency requests, the district court has consistently denied relief, and the appellate court has remained inactive for 22 days, leaving these vulnerable students without the support and education they urgently need.

Since March 30, they have been home, missing irreplaceable educational programming, facing unnecessary medical risks, and suffering harm that retrospective orders cannot fix. No case more directly tests the enforceability of federal statutory rights.

Spring break ends on April 13, 2026. Without a Second Circuit ruling by then, these children will miss more school days at iBRAIN, with the school year ending in June. Delays risk losing the entire 2025–2026 school year. Congress' IDEA stay-put provision was designed to prevent disabled children from losing school years to litigation delays. DOE's non-payment, the district court's denials, and the Second Circuit's silence violate this intent. Only this Court's intervention can ensure that Congress' mandate is enforced in time.

The writ of mandamus simply asks the Second Circuit to rule on the emergency motion before it. The children do not seek a merits decision or an order against DOE—only action from the court with

jurisdiction. Over 22 days of silence in the face of ongoing, irreversible harm to six disabled children with established legal rights is an extraordinary cause that deserves an extraordinary writ. This Court should grant it.

Given the compelling evidence and clear federal mandate, a writ of mandamus should be issued immediately. The equities, the urgent needs of the children, and the public interest in enforceable statutory rights call for swift judicial action. Granting the writ ensures that Congress' automatic injunction works as intended, protects vulnerable students, and upholds IDEA's legal protections.

CONCLUSION

For the reasons stated above, the Court should issue a writ of mandamus directing the Second Circuit to rule on Petitioners' emergency motion in No. 26–523 by April 12, 2026, and, if necessary, act on Petitioners' renewed expedited motion in No. 25–2127. The request is simple: compel the court with jurisdiction to exercise it.

Honig v. Doe established Congress' stay-put provision as an automatic injunction to prevent harm from delay for disabled children. 484 U.S. at 323–327. The Second Circuit's decisions in *Murphy*, *Ventura de Paulino*, and *Mendez* reinforce this. The harm is real, compounding, and irreversible. All other forums have been exhausted. As of this Petition, six children have been denied access to their court-mandated school for

8 days, with six more days until classes resume. Only this Court's intervention can make Congress' automatic protection effective in time.

Dated: April 7, 2026
New York, New York

Respectfully submitted,
Liberty & Freedom Legal Group
Counsel for Petitioners,

By: ***/S/ Rory J. Bellantoni***
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APPENDIX

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INTERLOCUTORY NOTICE OF APPEAL,
DATED MARCH 5, 2026

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____x

OLIVER BRUCKAUF, as Parent and Guardian of E.B., and OLIVER BRUCKAUF, Individually; et al.,
Plaintiffs,

v. 25-cv-05679 (KPF)

MELISSA AVILÉS-RAMOS, in her official capacity as Chancellor of the New York City Department of Education, and the NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants.

_____x

Pursuant to Fed. R. App. P. 3(c)(1) and Fed. R. App. P. 4(a), notice is hereby given that Plaintiffs appeal to the United States Court of Appeals for the Second Circuit. Plaintiffs appeal from the Order of the Hon. Katherine Polk Failla, U.S.D.J. [Dkt. No. 52], entered on March 5, 2026, denying Plaintiffs' motion for a Temporary Restraining Order.

Dated: March 5, 2026
New York, New York
/s/ Jeffrey Arlen Spinner
Jeffrey Arlen Spinner
Liberty & Freedom Legal Group Ltd.
Attorneys for Plaintiffs
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New York, NY 10016
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(646) 850-5035

A-3
DISTRICT COURT'S ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, DATED MARCH 5, 2026

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

OLIVER BRUCKAUF, as Parent and Natural Guardian
of E.B.", and OLIVER BRUCKAUF, Individually;

JANERIS RODRIGUEZ MEJIA, as Parent and Natural
Guardian of E.R., and JANERIS RODRIGUEZ MEJIA,
Individually;

MAYTINEE BIRD, as Parent and Natural Guardian of H.C., and MAYTINEE BIRD, Individually;

DONNA CORNETT, as Parent and Natural Guardian
of J.B., and DONNA CORNETT, Individually;

KAMOLPORN LUMMAYOS, as Parent and Natural Guardian of R.L., and KAMOLPORN LUMMAYOS, Individually;

CLAUDIA RIVAS, as Parent and Natural Guardian of S.C.,
and CLAUDIA RIVAS, Individually;

SANDRA LEE, as Parent and Natural Guardian of V.G.,

and SANDRA LEE, Individually;

CRYSAL CROSLEY, as Parent and Natural Guardian of Z.C.,
and CRYSAL CROSLEY, Individually;

MADELINE GRULLON, as Parent and Natural Guardian
of C.B., and MADELINE GRULLON, Individually;

MARIA HIDALGO, as Parent and Natural Guardian of
L.S., and MARIA HIDALGO, Individually;

ADEJUMOKE OGUNLEYE, as Parent and Natural Guardian of D.O., and ADEJUMOKE OGUNLEYE, Individually;

ROSA ELBA de PAULINO, as Parent and Natural Guardian of R.P., and ROSA ELBA de PAULINO, Individually;

MARTINE THOMAS and SCOTT THOMAS,
as Parents and Natural Guardians of A.T.1, and
MARTINE THOMAS and SCOTT THOMAS,
Individually;

SHANTEL TALLEY, as Parent and Natural Guardian of A.C., and SHANTEL TALLEY, Individually;

MARLENE VASQUEZ, as Parent and Natural Guardian
of L.C., and MARLENE VASQUEZ, Individually;

LINDA LARACH-COHEN, as Parent and Natural Guardian of M.C., and LINDA LARACH-COHEN, Individually;

MARILYN BECKFORD, as Parent and Natural Guardian of M.B., and MARILYN BECKFORD, Individually;

PATRICK DONOHUE, as Parent and Natural Guardian of S.J.D., and PATRICK DONOHUE, Individually,

Plaintiffs,

-v.-

MELISSA AVILES-RAMOS, in her official capacity as Chancellor of the New York City Department of Education; and NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants.

Case No. 25-cv-05679-KPF

ORDER DENYING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

KATHERINE POLK FAILLA, District Judge:

For the reasons stated on the record at the March 5, 2026 telephonic conference, Plaintiffs' motion for a preliminary injunction (Dkt. #48) is DENIED.

SO ORDERED.

Dated: March 5, 2026
New York, New York

s/ Katherine Polk Failla
KATHERINE POLK FAILLA
United States District Judge

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT (March 16, 2026)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of March, two thousand twenty-six.

Before:
BETH ROBINSON,
Circuit Judge.

OLIVER BRUCKAUF, as Parent and Natural Guardian of E.B. and Individually, et al.,

Plaintiffs-Appellants,

v. ORDER
Docket No. 26-523

MELISSA AVILES-RAMOS, in her official capacity as Chancellor of the New York City Department of Education, and NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants-Appellees.

Appellants move for an injunction pending appeal and for immediate interim relief.

IT IS HEREBY ORDERED that the motion for an injunction pending appeal is REFERRED to a three-judge motions panel. The Court declines to grant interim relief pending decision by the panel.

For the Court:
Catherine O'Hagan Wolfe, Clerk of Court

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT (March 16, 2026)

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For the Court:
Catherine O'Hagan Wolfe, Clerk of Court

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APPELLANTS' REPLY TO APPELLEES' OPPOSITION FOR INTERIM RELIEF, DATED MARCH 26, 2026

March 26, 2026

VIA ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, New York 10017

Re: Bruckauf v. Aviles-Ramos, Docket No. 26-523

To the Honorable Clerk of the Court:

Plaintiffs-Appellants, by their attorneys, respectfully submit this reply to the opposition filed by DOE, the New York City Department of Education (DOE) and its Chancellor, regarding application for emergency relief on behalf of E.B., R.L., H.C., S.C., S.J.D., and L.S.

DOE is not being asked to make immediate payments in the abstract; it is being asked not to allow its own delay to extinguish stay-put services that are already part of the students' placements. DOE does not dispute that each student's pendency placement at iBRAIN includes nursing services under 20 U.S.C. § 1415(j). It instead imposes extra-statutory barriers: requiring additional orders (E.B., R.L.), inventing

documentation requirements (H.C.), claiming compliance despite delayed payment (L.S.), and asserting a unilateral "stay" while conceding obligation (S.C., S.J.D.).

THE UNDENIABLE EMERGENCY AND MISCHARACTERIZATION OF EVIDENCE

On February 19, 2026, the nursing provider notified parents that services for E.B., R.L., H.C., S.C., S.J.D., and L.S. would be paused absent payment of pendency arrears. Plaintiffs sought emergency relief, which was denied. [ECF No. 13.2 A-207-A-218; D.C . Dkts. 47, 52].

DOE acknowledges that under Mendez v. Banks, 65 F.4th 56, 63 (2d Cir. 2023), preliminary injunctive relief is appropriate where delay in payment jeopardizes a child's placement. Yet DOE contends there is no emergency while failing to dispute that the loss of nursing services would disrupt Plaintiffs' placements. Its remaining arguments mischaracterize the record and ignore undisputed evidence of imminent harm.

DOE cannot unilaterally suspend pendency obligations indefinitely without obtaining a stay from a tribunal. Administrative delay, appeals, or internal payment practices cannot substitute for judicial relief. Accepting DOE's position would render § 1415(j) non-automatic and subject to unilateral delay, undermining its core function of maintaining the status quo and threatening students' placements. If that were enough, stay-put would cease to be automatic and would instead exist only at the pace

DOE chose to honor it, no matter the harm that befalls the most vulnerable students.

TESTIMONY CONFIRMS THE IMMINENT JEOPARDY OF SERVICES

Testimony in Bruckauf v. Aviles-Ramos, No. 25-cv-05679 (S.D.N.Y. Mar. 3, 2026), confirmed immediate risk. B&H's COO, Chesky Jacobowitz, testified at length describing how DOE's nonpayment created severe strain threatening continued services. [March 24, 2026 Declaration of Zeal Patel Ex. A, Transcript of March 3, 2026 Hearing and Deposition in Case No. 25-cv-05679 at 45-46, 53-54, 60]. On February 19, 2026, Mr. Jacobowitz emailed Plaintiffs giving notice that each of E.B., R.L., H.C., S.C., S.J.D., and L.S.'s nursing services would be paused absent receipt of past due payments. [ECF No. 13.2, Declaration of Zeal Patel, Exhibits A, B, C, D, E, and F at A-207-A-218].

B&H, a primary provider for iBRAIN students, historically bore significant financial risk by deferring payment until DOE satisfied its obligations. DOE's systemic delays, refusals, and partial payments have rendered that arrangement unsustainable. As Mr. Jacobowitz testified, B&H is owed millions and cannot continue indefinitely without payment, making service interruption a foreseeable business necessity rather than a speculative harm. [March 24, 2026 Declaration of Zeal Patel Ex. A at 63-64].

B&H notified parents that services would suspend March 5, 2026, later extending to March 20 during motion practice. Partial payments do not resolve

substantial arrears per student, making interruption foreseeable. [March 24, 2026 Declaration of Zeal Patel Ex. A at 63-64].

THE LITIGATION DECISIONS MADE IN PLAINTIFFS-APPELLANTS' PREVIOUS REQUESTS FOR PRELIMINARY INJUNCTION ARE WHOLLY IRRELEVANT

L&F represents families affected by DOE's acknowledged policy of routinely contesting pendency in iBRAIN matters, resulting in unequal treatment and requiring repeated motion practice to secure funding for placements and related services under the IDEA. L&F must make similar responses and arguments across the myriad of cases due to DOE's consistent practice of contesting claims involving iBRAIN students.

DOE does not argue that Plaintiffs' placements would remain secure without nursing services. (See Dkt. 21.1.) The central issue is the present, documented risk created by the February 19, 2026 notice. Unlike prior motions, which Plaintiffs-Appellants continue to contend were justified, the threat here is concrete and imminent. As sworn testimony confirms, DOE's delays have placed services in jeopardy, risking irreparable disruption to Plaintiffs' placements—the precise harm § 1415(j) is designed to prevent.

DOE mischaracterizes other cases. The cited matters involve prospective funding disputes or FOFDs under appeal, not pendency obligations, and each reflects at least a colorable claim to nursing services that DOE contests.

DOE'S ATTEMPTS TO MISLEAD THE COURT REGARDING EVIDENCE PRESENTED

DOE states that "DOE was in fact current on the payments for at least one of these students(.)" (Dkt. 21.1 at 2-3). DOE is correct that a clerical error was made regarding exactly one student (that student shared the same initials with a student who was in fact notified that their nursing services would be suspended). When the error was discovered, it was immediately corrected.

DOE's attack on the parent notices is unfounded. Each email used a standard template but identified student-specific arrears ranging from $165,390.00 to $355,663.00, accurately reflecting amounts due after payments. DOE identifies no concrete discrepancy.

DOE'S ALLEGATIONS REGARDING CLAIMED RELATIONSHIPS BETWEEN ENTITIES ARE A DISTRACTION

DOE's insinuations regarding relationships between entities are a distraction. Testimony before Judge Failla addressed these issues in detail, and DOE's counsel participated. The record reflects full transparency; these claims do not bear on DOE's unpaid obligations. [March 24, 2026 Declaration of Zeal Patel Ex. A, at 1, 38, 62-63]. The notion that Archibald has been anything but transparent is a baseless accusation, serving only as a distraction from the core issue of unpaid services.

DOE'S ARGUMENTS REGARDING PENDENCY ARE LEGALLY FLAWED

DOE's position contradicts settled law. Section 1415(j) operates as an "automatic injunction" preserving the student's placement, including funding, as an "absolute rule in favor of the status quo" including funding (which must be processed in the normal course), which goes hand-in-hand with placement. Mendez, 65 F.4th at 62 (quoting Zvi D. ex rel. Shirley D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)).

DOE ATTEMPTS TO AVOID PENDENCY PAYMENTS EVEN WHERE IT IS NOT CONTESTING ITS OBLIGATION TO PAY FOR NURSING SERVICES

DOE claims it is justified in its failure to pay for nursing services for E.B. and R.L. as there is no pendency order requiring DOE to remit pendency funding. This argument is legally flawed and ignores that in both students' cases DOE concedes it is mandated to pay for nursing services as part of pendency for the 2025-2026 ESY.

The district court pressed DOE on this argument:

The Court: ... so your argument to me is: Even though the student is remaining at iBrain because it's the last agreed upon placement—we're nine months in; is that correct?

Ms. Roe (attorney for DOE): Nine months into this current school year?

The Court: Yeah.

Ms. Roe: Yeah, I guess that would be correct. We are nine months into the current school year.

The Court: I'm sorry. I'll ask a more pointed question, Ms. Roe. It would be a concern for me if somehow, either side were able to game the system such that the decision about services wouldn't be made until after the services had been provided for the year.

How can I have confidence that that's not happening now?

Ms. Roe: I would say—I mean, at the administrative level, we have no control over when those decisions come out. When they do come out, we'll, of course, meet our obligations.

Dkt. 21.2 at 17-18.

DOE acknowledges its obligation for E.B. and R.L. yet has delayed payment for most of the school year, incorrectly asserting a pendency order is required. That position lacks legal support and serves only to delay conceded obligations.

Section 1415(j) operates as an automatic injunction preserving placement and funding as an absolute status quo rule. Mendez, 65 F.4th at 62 (quoting Zvi D., 694 F.2d at 906). While not requiring expedited payment, it does not permit DOE to impose extra conditions or delay payment indefinitely absent a stay.

For E.B., both parties agree pendency arises from SRO Decision No. 23-238, which includes nursing services [D.C. Dkt. 1-1 at 18]. Despite months of

briefing and agreement, no pendency order has issued, and DOE has not disputed the entitlement—only delayed payment.

Similarly, for R.L., both parties agree pendency derives from SRO Decision No. 23-271, including nursing services. Despite a July 2025 request, no pendency order has issued, reflecting administrative delay rather than any substantive dispute. IHO Decision No. 296333 was issued on March 17, 2026, and failed to address pendency. [March 24, 2026 Declaration of Zeal Patel Ex. B]. It is now nearly nine (9) months since Lummayos sought an order of pendency and one has yet to be issued. Lummayos is now preparing a request for review in an attempt to finally have the administrative process confirm R.L.'s pendency lies where both Lummayos and DOE agree it does.

Section 1415(j) requires DOE to fund pendency placements promptly when that student's placement is in imminent jeopardy. Mendez, 65 F.4th at 63. Administrative delay does not excuse compliance, and DOE has never sought a stay; its nonpayment amounts to a self-imposed stay. Nor can administrative hearings still in progress alter the basis of a student's pendency; so any findings in an IHO or SRO decision that is not yet final can carry no weight in these proceedings.

The cases of E.B. and R.L. illustrate why the automatic injunction of § 1415(j) is necessary to achieve Congress's goal of maintaining the student's educational placement during the pendency of

disputes over placement when those disputes drag on to the point the placement is threatened.

DOE'S MISLEADING CLAIMS TO BE IMPLEMENTING L.S.'S PENDENCY FUNDING IN THE ORDINARY COURSE IS BELIED BY ITS ACTUAL BEHAVIOR

Although ordered to fund L.S.'s nursing services by October 13, 2025, DOE made only one payment in March 2026 after the underlying emergency motion for temporary restraining order was brought and this appeal was initiated, leaving substantial arrears. This is not implementation "in the normal course," and no stay was sought.

DOE ATTEMPTS TO AVOID PENDENCY PAYMENTS EVEN WHERE IT IS NOT CONTESTING ITS OBLIGATION TO PAY FOR NURSING SERVICE

DOE improperly withholds H.C.'s nursing payments based on a demanded cost breakdown between travel and in-school services—documentation that does not exist and has never been required in similar circumstances. Some preliminary facts are necessary to understand the provision of H.C.'s nursing services:

- the same nurse provides both travel and in-school nursing services to H.C. under a single contract at a single rate

- the nursing services contract does not break down the cost into travel nursing services and in-school nursing services

- there is no documentation that could be provided to meet DOE's request

- DOE has provided no nursing services, whether in-school or travel, for H.C. during the 2025-2026 ESY

No order requires such a breakdown. DOE may not invent conditions to avoid payment where governing decisions mandate funding of nursing services.

The parties dispute whether FOFD Decision No. 228745 (as Plaintiffs assert) or FOFD Decision No. 277039 (as DOE asserts) is the basis for pendency. As the IHO Decision that DOE relies on for the finding that FOFD Decision No. 277039 is the basis for pendency (FOFD Decision No. 295762) is currently under appeal, it carries no weight and the unappealed FOFD Decision No. 228745 must be the basis for pendency at present. However, whichever party is correct about the basis for pendency has no impact on DOE's obligation to pay for H.C.'s nursing services as both decisions are clear in their requirement that DOE fund H.C.'s private nursing services.

FOFD Decision No. 228745 provides (emphasis added):

... for any Private School services provided by a 1:1 nurse or a 1:1 paraprofessional, and any transportation services provided by a 1:1 nurse, as ordered above for the 12-month 2022-2023 school year, where such services are not paid under the Private School enrollment contract or the transportation contract, respectively, the DOE shall fund those services directly to such providers, paid at the higher of either current market rate or the highest

rate the Department has paid during the six months preceding this decision.

FOFD Decision No. 277039 provides (emphasis added):

DOE shall fund the cost of 1:1 nursing services that are actually provided to and received by the Student on school days during the 2024-2025 12-month school year, whether from a 1:1 transportation nurse or a 1:1 school nurse during school hours, in an amount up to but not exceeding $333,608, to the extent this amount or any portion thereof has not previously been paid under pendency, which amount shall be paid to B&H Health Care

FOFD Decision No. 295762 provides (emphasis added):

Parent seeks a pendency order for funding of 1:1 nursing services (1:1 transportation nurse and 1:1 private duty nurse) pursuant to the Nursing Services Contract between the Parent and the Nursing Services Company for the 2025-26 school year. Student is entitled to the 1:1 nursing program that was ordered in the 2025 FOFD (which, as for transportation, I am assuming was materially the same as the Nursing Services Contract). I am ordering 1:1 nursing services on that basis. The DOE retains the right to determine how to implement that program at any time during the pendency of this case, including providing Student's 1:1 nursing services via a provider other than the Nursing Services Company.

DOE's demand for cost breakdowns for H.C. is unsupported by any order or contract and functions

as a pretext to avoid payment. All relevant decisions require funding of all provided nursing services. It is DOE's intention to refuse payment for travel nursing services. This would trigger even more needless litigation to compel DOE to meet its funding obligations.

DOE's partial tuition payments while refusing nursing payments under the same pendency obligation highlight noncompliance. This selective approach both concedes pendency and violates it.

PARTIAL PENDENCY PAYMENTS UNDERSCORE, RATHER THAN MITIGATE, DOE'S OBLIGATION TO FUND PENDENCY PLACEMENTS

DOE's partial payments for S.C. and S.J.D. confirm, rather than mitigate, its obligation. Section 1415(j) requires full funding. Extended, unilateral underpayment cannot be justified absent a stay. DOE cannot have it both ways: either it acknowledges pendency (in which case it must fulfill its funding obligations) or it disputes pendency (in which case the Court's intervention is necessary to determine where the student's pendency lies).

DOE ATTEMPTS TO RELY ON PENDENCY AS THE BASIS FOR MAKING CERTAIN PAYMENTS WHILE REFUSING TO FUND OTHER REQUIRED ELEMENTS OF THE SAME PENDENCY BASIS

DOE cannot rely on pendency to justify tuition payments while refusing nursing payments required under the same basis for pendency. Having conceded pendency through partial compliance, it cannot

selectively withhold funding without legal basis. Nor can it rely on claims that initiating an appeal at the administrative level allows it to stay an arbitrary portion of its pendency obligations once it has made partial payments; such actions are unmoored from any caselaw, administrative decision, or judicial ruling.

CONCLUSION

For the foregoing reasons, Plaintiffs-Appellants respectfully request that this Court grant their motion for emergency relief, thereby ensuring the continuity of essential nursing services for the Student-Plaintiffs.

Respectfully submitted,

/s/ Jeffrey Arlen Spinner

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LETTER TO DISTRICT COURT JUDGE FOR AN INDICATIVE RULING, DATED MARCH 28, 2026

VIA ECF

Hon. Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Bruckauf et al. v. Aviles-Ramos et al., 25-cv-05679 (KPF)

Dear Judge Failla:

Plaintiffs respectfully submit this emergency letter motion under Fed. R. Civ. P. 62.1. Plaintiffs do not ask this Court to disregard the pending appeal. Because Plaintiffs' interlocutory appeal from the Court's March 5, 2026 Order remains pending before the Second Circuit, Plaintiffs seek only the relief Rule 62.1 permits: a statement that the Court would grant targeted emergency relief if the Court of Appeals remands for that purpose, or, at a minimum, that this motion raises a substantial issue. See Fed. R. Civ. P. 62.1(a)(3).

Because the filing of Plaintiffs' notice of interlocutory appeal vested jurisdiction in the Second Circuit, this Court currently lacks authority to grant substantive relief on Plaintiffs' pending motion. Federal Rule of Civil Procedure 62.1 provides an established mechanism: this Court may issue an indicative ruling stating that it would grant the motion, or that the

motion raises a substantial issue, so that Plaintiffs may then seek a remand under Federal Rule of Appellate Procedure 12.1. Plaintiffs invoke that mechanism here. Fed. R. Civ. P. 62.1; Fed. R. App. P. 12.1; see also C.Q. v. River Springs Charter Schs., No. CV 18-cv-1017 SJO, 2018 WL 7461689, at *3 (C.D. Cal. Nov. 27, 2018) (explaining the four-step Rule 62.1 procedure).

This application is prompted by post-order developments that did not exist when the Court ruled. On March 27, 2026, counsel for the Nursing Provider informed Plaintiffs' counsel that 1:1 nursing services for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. would be discontinued until further notice beginning on the next school day, Monday, March 30, 2026. See the Declaration of Erin McGuinness ("McGuiness Decl.") attached hereto as Exhibit 1 at ¶ 3. Ms. McGuinness then communicated that development to each parent. Id. ¶ 4. As Ms. McGuinness further attests, each of these six Students requires both 1:1 transportation nursing and 1:1 school-day nursing as part of the Student's educational program and pendency placement; without these services, these six Students cannot travel to iBRAIN or attend school during the school day; and absent immediate intervention, they will be unable to travel to or attend school beginning Monday, March 30, 2026. Id. ¶¶ 5–7.

1. Plaintiffs Preserve Their Position that Irreparable Harm is not Required for Stay-Put Relief.

Plaintiffs respectfully maintain that irreparable harm is not required to enforce the Individuals with

Disabilities Education Act's ("IDEA") stay-put rights. The Supreme Court has long recognized that § 1415(j) reflects Congress' deliberate judgment to remove discretion from school districts during disputes over a child's placement. See Honig v. Doe, 484 U.S. 305, 323 (1988) ("Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students."). Consistent with Honig, the Second Circuit has repeatedly held that pendency operates as an automatic preliminary injunction and substitutes an absolute rule in favor of the status quo for a court's discretionary consideration of irreparable harm, likelihood of success, and the balance of hardships. Zvi D. by Shirley D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982). Thus, when a parent seeks enforcement of an established pendency placement, the ordinary Rule 65 inquiry does not govern.

These authorities do not conflict with Mendez. In Abrams v. Carranza, No. 19-CV-4175 (AJN), 2019 WL 2385561 (S.D.N.Y. June 6, 2019), then-District Judge Nathan reiterated that, in the pendency context, "the preliminary injunction analysis is truncated," because § 1415(j) functions as an "automatic preliminary injunction" that displaces the ordinary irreparable-harm and balancing inquiry. Four years later, writing for the Second Circuit in Mendez v. Banks, 65 F.4th 56 (2d Cir. 2023), Judge Nathan did not retreat from that principle; she held only that § 1415(j) does not require DOE to "automatically fast-track funding" in every case, while expressly preserving relief where "a delay or failure to pay has jeopardized their child's educational placement." Mendez, 65 F.4th at 64. Read together, Abrams and

Mendez establish continuity, not conflict: pendency remains automatic, but where DOE's delay jeopardizes implementation of the placement, judicial relief remains available. See ECF No. 47-3, at 4–6; see also Patel Decl. ¶¶ 852–860, No. 26-523, Dkt. 13.2.

Nor can DOE plausibly characterize the present request as an attempt to "fast-track" payment. The 2025–2026 extended school year began on July 9, 2025; as of today, March 28, 2026, that was 262 days ago. Cf. ECF No. 59, at 1 (noting that as of March 24, 2026, the school year began "258 days ago"). At this point, after months of DOE delay, repeated administrative extensions, and repeated assurances that payments would issue in the "ordinary course" or "normal course of business," it would defy credulity to describe Plaintiffs' request as one for accelerated payment rather than a request to prevent DOE from defeating pendency through prolonged nonpayment. See Mendez, 65 F.4th at 65; ECF No. 59, at 1–3; Patel Decl. ¶¶ 318–321, 330–333, No. 26-523, Dkt. 13.2.

2. But this Court Repeatedly Applied an Irreparable-Harm Standard and Denied Relief on that Basis.

Although Plaintiffs preserve the foregoing legal position, the Court repeatedly took a different view and denied prior relief because Plaintiffs had not shown irreparable harm. During the August 14, 2025, conference, the Court stated: "From my own perspective, I don't think you've—the facts of this case warrant injunctive relief under the traditional four-factor test. I don't see irreparable harm. I'm not—I just don't." Patel Decl. ¶ 144, No. 26-523, Dkt. 13.2. The Court also stated: "You haven't proven

irreparable harm. Under Mendez, you need to show that the student is—that there's some possible—there's nothing here suggesting irreparable harm." Id. ¶ 147. And the Court again reiterated: "there is no showing of irreparable harm here because you're conflating your irreparable harm into your success on the merits issues." Id. ¶ 148. The Court then stated: "So I'm not going to grant the request for preliminary injunctive relief," and added, "I think that it is unwise for you to use preliminary injunction motions to try and get the relief that you seek." Id. ¶¶ 150–151.

The same framework governed the Court's March 5, 2026, ruling on the six-Student TRO application. The Court stated: "Courts are quite clear, however, that in this setting a showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction or a temporary restraining order." Mar. 5, 2026, Hr'g Tr. 127:7–10, Ex. B to Dkt. 29.1, No. 26-523. The Court added that irreparable harm "is found to be an injury that is not remote or speculative but actual and imminent, for which a monetary award cannot be adequate compensation." Id. at 127:13–18. And after considering the six Students, the Court concluded: "ultimately I do not find that the showing of imminent loss of services under Mendez, or, in the preliminary injunction terms, irreparable harm has been made." Id. at 129:16–20.

Those are the standards the Court chose to apply. The factual premise has now changed. What the Court previously viewed as insufficiently imminent is now date-certain: the cessation of nursing services will begin on Monday, March 30, 2026. McGuinness Decl.

¶¶ 3–7. Thus, even under the Court's own framing, the feared service interruption is no longer speculative.

3. These Six Students Indisputably Require Nursing and Transport Nursing as Part of Pendency.

The existing record already establishes that these six Students do not merely benefit from nursing; they require nursing, including transportation-linked nursing, to reach school safely, remain there safely, and receive educational benefits. The relevant quotations are already in the record.

E.B.

E.B.'s pendency basis is SRO Decision No. 23-238, which ordered that "the district is directed to fully fund the student's special transportation and 1:1 nursing services for the 2023-24 school year as set forth in the relevant contracts in the hearing record." Patel Decl. ¶ 610, No. 26-523, Dkt. 13.2 (quoting ECF No. 1-1, at 30). The Due Process Complaint ("DPC") further states that "[E.B.]'s complex medical needs necessitate the constant presence of a 1:1 nurse to monitor seizure activity, administer medications, and support her daily health management," and that she "requires maximal support for functional mobility and safe navigation of all environments, both within school and during transportation." ECF No. 1-1, at 4.

H.C.

H.C.'s record is explicit that nursing is necessary both for transportation and for school attendance. A prior Findings of Fact and Decision ("FOFD") held that "not

every student required a nurse for the classroom or for transportation, but the Director more than sufficiently explained why a nurse was critical for both, given that the Student's heart condition can cause her oxygen levels to drop." Patel Decl. ¶ 640, No. 26-523, Dkt. 13.2 (quoting FOFD No. 228745, at 34–35). A later FOFD then held that "the Student required the services of a full-time 1:1 nurse throughout the school day in order for her to access her special education program." Id. ¶ 644 (quoting FOFD No. 277039). Moreover, the same decision described those nursing needs in operational terms: "The Student has a 1:1 nurse with her throughout the school day to administer emergency medication, aid in her safety, monitor for seizure activity, monitor her oxygen saturation levels, administer oxygen when her saturation level declines, and vent her G-tube, change the dressing, and replace the G-tube if it is dislodged." Id. ¶ 645.

R.L.

For R.L., even the Committee on Special Education ("CSE") recognized the transportation-linked nursing requirement. Patel explains that the SRO noted: "The November 2022 CSE recommended that the student receive special transportation services, including 1:1 nursing services, a lift bus, use of a regular size wheelchair, and a route with fewer students." Patel Decl. ¶ 682, No. 26-523, Dkt. 13.2 (quoting ECF No. 1-5, at 32). The DPC further states that "[R.L.] suffers from a brain injury resulting in severe impairments in the following areas: cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor

abilities, psychosocial behavior, physical functions, information processing and speech"; that she "receives all of her nutrition via G-tube"; that "[d]uring these times, [R.L.] requires additional support and intervention from her nurse to maintain her active participation in her classroom or related service sessions"; and that she requires "a 1:1 nurse that assists her with her medical/health needs." ECF No. 1-5, at 4–5.

S.C.

S.C.'s pendency basis arises from SRO Decision No. 24-058, in which the SRO held the parties had not appealed "that the student required 1:1 nursing services." Patel Decl. ¶ 701, No. 26-523, Dkt. 13.2 (quoting ECF No. 1-6, at 24). The same SRO decision ordered DOE to "fully fund the costs of the student's tuition at iBrain, and unilaterally obtained 1:1 nursing services and special transportation for the 2023-24 school year as set forth in the relevant contracts in the hearing record." Id. ¶ 703 (quoting ECF No. 1-6, at 29). And in the 2025–2026 pendency order, the IHO ordered DOE to "directly fund" both "the Student's 1:1 nursing services provided by the Nursing Company" and "the Student's transportation services provided by the Transportation Company." Id. ¶ 709.

L.S.

For L.S., the prior FOFD held: "The failure to consider 1:1 nursing care is a failure to offer the Student an educational program reasonably calculated to offer a FAPE for the 2023-2024 school year." Patel Decl. ¶

732, No. 26-523, Dkt. 13.2 (quoting ECF No. 1-10, at 21). The same decision found that "the weight of the evidence establishes that the services offered by the Nursing Provider are appropriate." Id. ¶ 734 (quoting ECF No. 1-10, at 24). And the later FOFD explained that, "[d]ue 'to the complexities of [her] medical condition,' she also requires 'a 1-to-1 nurse ... for her G-tube management, seizure activity, and administration of all daily medical tasks.'" Id. ¶ 759 (quoting FOFD No. 295779, at 15).

S.J.D.

S.J.D.'s DPC states that, because of her severe medical and neurological needs, she requires "a full-time 1:1 nurse to support her medical needs and monitor seizure activity during the day and while in transit to and from school." ECF No. 1-18, at 4. The prior FOFD likewise states: "Here, the record establishes Student's serious medical concerns," and "DOE did not argue that Student does not need 1:1 nursing services. ..." ECF No. 1-19, at 3. The same decision then ordered: "I hold DOE shall pay $303,280 for the Student's nursing to nursing provider." Id.

These quotations are not summaries or extrapolations. They are the record. And they show that, for all six Students, nursing is indispensable to both transportation and attendance. As of Monday, March 30, 2026, that indispensability becomes concrete and irrevocable: the nursing services that make school access possible for all six Students will stop. McGuinness Decl. ¶¶ 3–7.

4. Nursing and Transportation are Required Related Services; Without Them, School Access Collapses.

Federal and state law make clear that both transportation and nursing may be required related services when necessary for a student with disabilities to access school and receive a FAPE. IDEA defines "related services" to include "transportation, and such developmental, corrective, and other supportive services ... as may be required to assist a child with a disability to benefit from special education." 20 U.S.C. § 1401(26)(A). In Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984), the Supreme Court recognized that supportive services necessary to enable a child to attend school fall within IDEA's related-services mandate. And in Cedar Rapids Cmty. Sch. Dist. v. Garret F. ex rel. Charlene F., 526 U.S. 66 (1999), the Court held that a school district must provide continuous nursing services necessary to keep a student in school, because the IDEA's related-services mandate requires whatever supportive services are needed for the child to access education. 526 U.S. at 73–79.

New York law is equally clear. State law requires districts to provide "suitable transportation" to and from a nonpublic school for a child with a disability whom the CSE has identified and attends that school to receive special education or related services. N.Y. Educ. Law § 4402(4)(d) (McKinney). The Commissioner's Regulations likewise define special education to include "special transportation, provided at no cost to the parent, to meet the unique needs of students with disabilities." N.Y. Comp. Codes R. & Regs. tit. 8, § 200.1(ww). The Second Circuit has

likewise recognized that "the IDEA defines 'free appropriate public education' to include 'special education and related services.'" Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 453 (2d Cir. 2015).

That is precisely the situation here. These six Students do not merely require a classroom seat—they require nursing during transportation and during the school day to reach school safely, remain there safely, and receive educational benefits once there. For H.C., the record states that "a nurse was critical for both" classroom and transportation. Patel Decl. ¶ 640, No. 26-523, Dkt. 13.2. For S.J.D., the record states that she requires "a full-time 1:1 nurse to support her medical needs and monitor seizure activity day and while in transit to and from school." ECF No. 1-18, at 4. For E.B., the record states that "[E.B.]'s complex medical needs necessitate the constant presence of a 1:1 nurse to monitor seizure activity, administer medications, and support her daily health management," and that she "requires maximal support for functional mobility and safe navigation of all environments, both within school and during transportation." ECF No. 1-1, at 4. Without transport nursing, these Students cannot get to school; without school-day nursing, they cannot remain there. The educational placement, therefore, collapses in practice. McGuinness Decl. ¶¶ 5–7.

5. DOE's Continuing Self-Stay / Susquenita-Murphy Point.

Plaintiffs have already placed before this Court, in their March 24, 2026, pre-motion letter, the core point that DOE's nonpayment functions as an unlawful

self-stay. See ECF No. 59, at 1–3. Plaintiffs respectfully quote the following paragraph from ECF No. 59 in full because it captures the governing principle and places the issue squarely before both this Court and the Second Circuit.

The same conclusion follows from the prospective funding authorities. In Susquenita Sch. Dist. v. Raelee S. By & Through Heidi S., 96 F.3d 78 (3d Cir. 1996), the Third Circuit held that once there is an administrative or judicial decision vindicating the parents' position, "the school district's financial responsibility should begin," because without interim financial support the right to remain in the placement becomes illusory. The district court in Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 86 F. Supp. 2d 354 (S.D.N.Y. 2000), aff'd, 297 F.3d 195 (2d Cir. 2002), held that once the prior administrative ruling established the private placement, the district had to fund that placement prospectively during the pendency of the next dispute.

The Second Circuit, in an opinion by then-Judge Sotomayor, affirmed, explaining that "implicit" in stay-put "is the requirement that a school district continue to finance an educational placement made by the agency and consented to by the parent before the parent requested a due process hearing," because cutting off public funds "would amount to a unilateral change in placement." Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 199–200 (2d Cir. 2002) (quoting Zvi D. by Shirley D., 694 F.2d at 906). Mackey then cited Susquenita with approval, reaffirming that Congress' policy choice was for the child to remain in the current placement at public

expense during the dispute. Mackey ex rel. Thomas M. v. Bd. of Educ. for Arlington Cent. Sch. Dist., 386 F.3d 158, 160–61 (2d Cir.), supplemented sub nom. Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist., 112 F. App'x 89 (2d Cir. 2004). And the Second Circuit later summarized that "Congress' policy choice was that a child is entitled to remain in his or her placement at public expense during the pendency of an IEP dispute, regardless of the merit of the child's IEP challenge or the outcome of the relevant proceedings." Ventura de Paulino v. New York City Dep't of Educ., 959 F.3d 519, 529 (2d Cir. 2020). ECF No. 59, at 2.

That principle is decisive here. DOE has not obtained a stay. Yet, through continued nonpayment, it has accomplished the practical suspension of pendency services, and as of Monday, that self-effectuated stay will prevent these six Students from traveling to school or attending it at all. McGuinness Decl. ¶¶ 3–7.

6. The New Monday Facts Satisfy Even the Standard the Court Applied.

On March 5, the Court stated that it did "not find that the showing of imminent loss of services under Mendez, or, in the preliminary injunction terms, irreparable harm has been made." Mar. 5, 2026, Hr'g Tr. 129:16–20, Ex. B to Dkt. 29.1, No. 26-523. The difficulty with that conclusion is no longer only legal; it is now factual. The feared interruption has matured into a date-certain service termination on the next school day. McGuinness Decl. ¶¶ 3–7.

Under the Court's own formulation, irreparable harm requires an injury that is "not remote or speculative but actual and imminent." Mar. 5, 2026, Hr'g Tr. 127:13–16, Ex. B to Dkt. 29.1, No. 26-523. That is what now exists. Losing nursing on Monday is actual and imminent. And because the record establishes that nursing is required for safe transportation and school-day attendance, the resulting harm is not compensable by a later monetary award alone. Once the Students miss school or lose access to their stay-put programs because medically necessary services are no longer available, the educational continuity protected by § 1415(j) has already been disrupted. See Mendez, 65 F.4th at 64 ("Parents or guardians may still be able to obtain such relief if they establish that a delay or failure to pay has jeopardized their child's educational placement.").

7. Requested Rule 62.1 Relief.

For these reasons, Plaintiffs respectfully request that the Court enter an indicative ruling under Rule 62.1(a)(3) stating either:

(1) That the Court would grant targeted emergency relief if the Second Circuit remands for that purpose, namely an order requiring Defendants to immediately maintain and fund the nursing services necessary for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. to travel to and attend school pending further proceedings; or

(2) At a minimum, Plaintiffs' motion raises a substantial issue in light of the post-March 5 factual development that the six Students' nursing services

will be discontinued beginning Monday, March 30, 2026, causing them to be unable to travel to or attend school.

Plaintiffs respectfully request emergency relief in light of the Monday-morning interruption described above. If the Court so indicates, Plaintiffs will promptly notify the Second Circuit under Fed. R. App. P. 12.1.

The Plaintiffs thank the Court for its courtesy and consideration.

Respectfully submitted,

/s/ Rory J. Bellantoni
Rory J. Bellantoni, Esq. (RB2901)
Cc: All counsel of record via ECF

MEMO ENDORSEMENT FROM DISTRICT JUDGE DENYING REQUEST FOR INDICATIVE RULING AND ALL RELIEF, DATED MARCH 29, 2026

March 28, 2026

VIA ECF
MEMO ENDORSED

Hon. Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Bruckauf et al. v. Aviles-Ramos et al., 25-cv-05679 (KPF)

Dear Judge Failla:

Plaintiffs respectfully submit this emergency letter motion under Fed. R. Civ. P. 62.1. Plaintiffs do not ask this Court to disregard the pending appeal. Because Plaintiffs' interlocutory appeal from the Court's March 5, 2026 Order remains pending before the Second Circuit, Plaintiffs seek only the relief Rule 62.1 permits: a statement that the Court would grant targeted emergency relief if the Court of Appeals remands for that purpose, or, at a minimum, that this motion raises a substantial issue. See Fed. R. Civ. P. 62.1(a)(3).

Because the filing of Plaintiffs' notice of interlocutory appeal vested jurisdiction in the Second Circuit, this Court currently lacks authority to grant substantive relief on Plaintiffs' pending motion. Federal Rule of Civil Procedure 62.1 provides an established mechanism: this Court may issue an indicative ruling stating that it would grant the motion, or that the motion raises a substantial issue, so that Plaintiffs may then seek a remand under Federal Rule of Appellate Procedure 12.1. Plaintiffs invoke that mechanism here. Fed. R. Civ. P. 62.1; Fed. R. App. P. 12.1; see also C.Q. v. River Springs Charter Schs., No. CV 18-cv-1017 SJO, 2018 WL 7461689, at *3 (C.D. Cal. Nov. 27, 2018) (explaining the four-step Rule 62.1 procedure).

This application is prompted by post-order developments that did not exist when the Court ruled. On March 27, 2026, counsel for the Nursing Provider informed Plaintiffs' counsel that 1:1 nursing services for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. would be discontinued until further notice beginning on the next school day, Monday, March 30, 2026. See the Declaration of Erin McGuinness ("McGuiness Decl.") attached hereto as Exhibit 1 at ¶ 3. Ms. McGuinness then communicated that development to each parent. Id. ¶ 4. As Ms. McGuinness further attests, each of these six Students requires both 1:1 transportation nursing and 1:1 school-day nursing as part of the Student's educational program and pendency placement; without these services, these six Students cannot travel to iBRAIN or attend school during the school day; and absent immediate intervention, they will be unable to travel to or attend

school beginning Monday, March 30, 2026. Id. ¶¶ 5–7.

1. Plaintiffs Preserve Their Position that Irreparable Harm is not Required for Stay-Put Relief.

Plaintiffs respectfully maintain that irreparable harm is not required to enforce the Individuals with Disabilities Education Act's ("IDEA") stay-put rights. The Supreme Court has long recognized that § 1415(j) reflects Congress' deliberate judgment to remove discretion from school districts during disputes over a child's placement. See Honig v. Doe, 484 U.S. 305, 323 (1988) ("Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students."). Consistent with Honig, the Second Circuit has repeatedly held that pendency operates as an automatic preliminary injunction and substitutes an absolute rule in favor of the status quo for a court's discretionary consideration of irreparable harm, likelihood of success, and the balance of hardships. Zvi D. by Shirley D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982). Thus, when a parent seeks enforcement of an established pendency placement, the ordinary Rule 65 inquiry does not govern.

These authorities do not conflict with Mendez. In Abrams v. Carranza, No. 19-CV-4175 (AJN), 2019 WL 2385561 (S.D.N.Y. June 6, 2019), then-District Judge Nathan reiterated that, in the pendency context, "the preliminary injunction analysis is truncated," because § 1415(j) functions as an "automatic preliminary injunction" that displaces the ordinary irreparable-harm and balancing inquiry. Four years

later, writing for the Second Circuit in Mendez v. Banks, 65 F.4th 56 (2d Cir. 2023), Judge Nathan did not retreat from that principle; she held only that § 1415(j) does not require DOE to "automatically fast-track funding" in every case, while expressly preserving relief where "a delay or failure to pay has jeopardized their child's educational placement." Mendez, 65 F.4th at 64. Read together, Abrams and Mendez establish continuity, not conflict: pendency remains automatic, but where DOE's delay jeopardizes implementation of the placement, judicial relief remains available. See ECF No. 47–3, at 4–6; see also Patel Decl. ¶¶ 852–860, No. 26-523, Dkt. 13.2.

Nor can DOE plausibly characterize the present request as an attempt to "fast-track" payment. The 2025–2026 extended school year began on July 9, 2025; as of today, March 28, 2026, that was 262 days ago. Cf. ECF No. 59, at 1 (noting that as of March 24, 2026, the school year began "258 days ago"). At this point, after months of DOE delay, repeated administrative extensions, and repeated assurances that payments would issue in the "ordinary course" or "normal course of business," it would defy credulity to describe Plaintiffs' request as one for accelerated payment rather than a request to prevent DOE from defeating pendency through prolonged nonpayment. See Mendez, 65 F.4th at 65; ECF No. 59, at 1–3; Patel Decl. ¶¶ 318–321, 330–333, No. 26-523, Dkt. 13.2.

2. But this Court Repeatedly Applied an Irreparable-Harm Standard and Denied Relief on that Basis.

Although Plaintiffs preserve the foregoing legal position, the Court repeatedly took a different view

and denied prior relief because Plaintiffs had not shown irreparable harm. During the August 14, 2025, conference, the Court stated: "From my own perspective, I don't think you've—the facts of this case warrant injunctive relief under the traditional four-factor test. I don't see irreparable harm. I'm not—I just don't." Patel Decl. ¶ 144, No. 26-523, Dkt. 13.2. The Court also stated: "You haven't proven irreparable harm. Under Mendez, you need to show that the student is—that there's some possible—there's nothing here suggesting irreparable harm." Id. ¶ 147. And the Court again reiterated: "there is no showing of irreparable harm here because you're conflating your irreparable harm into your success on the merits issues." Id. ¶ 148. The Court then stated: "So I'm not going to grant the request for preliminary injunctive relief," and added, "I think that it is unwise for you to use preliminary injunction motions to try and get the relief that you seek." Id. ¶¶ 150–151.

The same framework governed the Court's March 5, 2026, ruling on the six-Student TRO application. The Court stated: "Courts are quite clear, however, that in this setting a showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction or a temporary restraining order." Mar. 5, 2026, Hr'g Tr. 127:7–10, Ex. B to Dkt. 29.1, No. 26–523. The Court added that irreparable harm "is found to be an injury that is not remote or speculative but actual and imminent, for which a monetary award cannot be adequate

compensation." Id. At 127:13–18. And after considering the six Students, the Court concluded: "ultimately I do not find that the showing of imminent loss of services under Mendez, or, in the preliminary

injunction terms, irreparable harm has been made." Id. At 129:16–20.

Those are the standards the Court chose to apply. The factual premise has now changed. What the Court previously viewed as insufficiently imminent is now date-certain: the cessation of nursing services will begin on Monday, March 30, 2026. McGuinness Decl. ¶¶ 3–7. Thus, even under the Court's own framing, the feared service interruption is no longer speculative.

3. These Six Students Indisputably Require Nursing and Transport Nursing as Part of Pendency.

The existing record already establishes that these six Students do not merely benefit from nursing; they require nursing, including transportation-linked nursing, to reach school safely, remain there safely, and receive educational benefits. The relevant quotations are already in the record.[1]

E.B.

E.B.'s pendency basis is SRO Decision No. 23–238, which ordered that "the district is directed to fully fund the student's special transportation and 1:1 nursing services for the 2023-24school year as set

[1] Although DOE has suggested that E.B. and R.L. lack current-year nursing pendency orders, the SRO decisions establishing their pendency placements expressly direct DOE to fund nursing and transportation services; those SRO directives constitute the operative pendency basis for the current school year and are not subject to re-litigation absent a superseding order. No superseding order exists. Patel Decl. ¶¶ 610, 682, No. 26-523, Dkt. 13.2; see also ECF Nos. 1-1, 1-5.

forth in the relevant contracts in the hearing record." Patel Decl. ¶ 610, No. 26-523, Dkt. 13.2 (quoting ECF No. 1–1, at 30). The Due Process Complaint ("DPC") further states that "[E.B.]'s complex medical needs necessitate the constant presence of a 1:1 nurse to monitor seizure activity, administer medications, and support her daily health management," and that she "requires maximal support for functional mobility and safe navigation of all environments, both within school and during transportation." ECF No. 1–1, at 4.

H.C.

H.C.'s record is explicit that nursing is necessary both for transportation and for school attendance. A prior Findings of Fact and Decision ("FOFD") held that "not every student required a nurse for the classroom or for transportation, but the Director more than sufficiently explained why a nurse was critical for both, given that the Student's heart condition can cause her oxygen levels to drop." Patel Decl. ¶ 640, No. 26-523, Dkt. 13.2 (quoting FOFD No. 228745, at 34–35). A later FOFD then held that "the Student required the services of a full-time 1:1 nurse throughout the school day in order for her to access her special education program." Id. ¶ 644 (quoting FOFD No. 277039). Moreover, the same decision described those nursing needs in operational terms: "The Student has a 1:1 nurse with her throughout the school day to administer emergency medication, aid in her safety, monitor for seizure activity, monitor her oxygen saturation levels, administer oxygen when her saturation level declines, and vent her G-tube, change the dressing, and replace the G-tube if it is dislodged." Id. ¶ 645.

R.L.

For R.L., even the Committee on Special Education ("CSE") recognized the transportation-linked nursing requirement. Patel explains that the SRO noted: "The November 2022 CSE recommended that the student receive special transportation services, including 1:1 nursing services, a lift bus, use of a regular size wheelchair, and a route with fewer students." Patel Decl. ¶ 682, No. 26-523, Dkt. 13.2 (quoting ECF No. 1–5, at 32). The DPC further states that "[R.L.] suffers from a brain injury resulting in severe impairments in the following areas: cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing and speech"; that she "receives all of her nutrition via G-tube"; that "[d]uring these times, [R.L.] requires additional support and intervention from her nurse to maintain her active participation in her classroom or related service sessions"; and that she requires "a 1:1 nurse that assists her with her medical/health needs." ECF No. 1–5, at 4–5.

S.C.

S.C.'s pendency basis arises from SRO Decision No. 24–058, in which the SRO held the parties had not appealed "that the student required 1:1 nursing services." Patel Decl. ¶ 701, No. 26- 523, Dkt. 13.2 (quoting ECF No. 1–6, at 24). The same SRO decision ordered DOE to "fully fund the costs of the student's tuition at iBrain, and unilaterally obtained 1:1 nursing services and special transportation for the 2023-24 school year as set forth in the relevant

contracts in the hearing record." Id. ¶ 703 (quoting ECF No. 1–6, at 29). And in the 2025–2026 pendency order, the IHO ordered DOE to "directly fund" both "the Student's 1:1 nursing services provided by the Nursing Company" and "the Student's transportation services provided by the Transportation Company." Id. ¶ 709.

L.S.

For L.S., the prior FOFD held: "The failure to consider 1:1 nursing care is a failure to offer the Student an educational program reasonably calculated to offer a FAPE for the 2023-2024 school year." Patel Decl. ¶ 732, No. 26-523, Dkt. 13.2 (quoting ECF No. 1–10, at 21). The same decision found that "the weight of the evidence establishes that the services offered by the Nursing Provider are appropriate." Id. ¶ 734 (quoting ECF No. 1–10, at 24). And the later FOFD explained that, "[d]ue 'to the complexities of [her] medical condition,' she also requires 'a 1-to-1 nurse. .. for her G-tube management, seizure activity, and administration of all daily medical tasks.'" Id. ¶ 759 (quoting FOFD No. 295779, at 15).

S.J.D.

S.J.D.'s DPC states that, because of her severe medical and neurological needs, she requires "a full-time 1:1 nurse to support her medical needs and monitor seizure activity during the day and while in transit to and from school." ECF No. 1–18, at 4. The prior FOFD likewise states: "Here, the record establishes Student's serious medical concerns," and "DOE did not argue that Student does not need 1:1

nursing services. .. ." ECF No. 1–19, at 3. The same decision then ordered: "I hold DOE shall pay $303,280 for the Student's nursing to nursing provider." Id.

These quotations are not summaries or extrapolations. They are the record. And they show that, for all six Students, nursing is indispensable to both transportation and attendance. As of Monday, March 30, 2026, that indispensability becomes concrete and irrevocable: the nursing services that make school access possible for all six Students will stop. McGuinness Decl. ¶¶ 3–7.

4. Nursing and Transportation are Required Related Services; Without Them, School Access Collapses.

Federal and state law make clear that both transportation and nursing may be required related services when necessary for a student with disabilities to access school and receive a FAPE. IDEA defines "related services" to include "transportation, and such developmental, corrective, and other supportive services. .. as may be required to assist a child with a disability to benefit from special education." 20 U.S.C. § 1401(26)(A). In Irving Indep. Sch. Dist. v. Tatro, 468 U.S. 883 (1984), the Supreme Court recognized that supportive services necessary to enable a child to attend school fall within IDEA's related-services mandate. And in Cedar Rapids Cmty. Sch. Dist. v. Garret F. ex rel. Charlene F., 526 U.S. 66 (1999), the Court held that a school district must provide continuous nursing services necessary to keep a student in school, because the IDEA's related-services mandate requires whatever supportive

services are needed for the child to access education. 526 U.S. at 73–79.

New York law is equally clear. State law requires districts to provide "suitable
transportation" to and from a nonpublic school for a child with a disability whom the CSE hasidentified and attends that school to receive special education or related services. N.Y. Educ. Law § 4402(4)(d) (McKinney). The Commissioner's Regulations likewise define special education to include "special transportation, provided at no cost to the parent, to meet the unique needs of students with disabilities." N.Y. Comp. Codes R. & Regs. tit. 8, § 200.1(ww). The Second Circuit has likewise recognized that "the IDEA defines 'free appropriate public education' to include 'special education and related services.'" Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 453 (2d Cir.2015).

That is precisely the situation here. These six Students do not merely require a classroom seat—they require nursing during transportation and during the school day to reach school safely, remain there safely, and receive educational benefits once there. For H.C., the record states that "a nurse was critical for both" classroom and transportation. Patel Decl. ¶ 640, No. 26-523, Dkt. 13.2. For S.J.D., the record states that she requires "a full-time 1:1 nurse to support her medical needs and monitor seizure activity day and while in transit to and from school." ECF No. 1–18, at 4. For
E.B., the record states that "[E.B.]'s complex medical needs necessitate the constant presence of a 1:1 nurse to monitor seizure activity, administer medications,

and support her daily health management," and that she "requires maximal support for functional mobility and safe navigation of all environments, both within school and during transportation." ECF No. 1–1, at 4. Without transport nursing, these Students cannot get to school; without school-day nursing, they cannot remain there. The educational placement, therefore, collapses in practice. McGuinness Decl. ¶¶ 5–7.

5. DOE's Continuing Self-Stay / Susquenita-Murphy Point.

Plaintiffs have already placed before this Court, in their March 24, 2026, pre-motion letter, the core point that DOE's nonpayment functions as an unlawful self-stay. See ECF No. 59, at 1–3. Plaintiffs respectfully quote the following paragraph from ECF No. 59 in full because it captures the governing principle and places the issue squarely before both this Court and the Second Circuit.

The same conclusion follows from the prospective funding authorities. In Susquenita Sch. Dist. v. Raelee S. By & Through Heidi S., 96 F.3d 78 (3d Cir. 1996), the Third Circuit held that once there is an administrative or judicial decision vindicating the parents' position, 'the school district's financial responsibility should begin,' because without interim financial support the right to remain in the placement becomes illusory. The district court in Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 86 F. Supp. 2d 354 (S.D.N.Y. 2000), aff'd, 297 F.3d 195 (2d Cir. 2002), held that once the prior administrative ruling established the private placement, the district had to

fund that placement prospectively during the pendency of the next dispute.

The Second Circuit, in an opinion by then-Judge Sotomayor, affirmed, explaining that 'implicit' in stay-put 'is the requirement that a school district continue to finance an educational placement made by the agency and consented to by the parent before the parent requested a due process hearing,' because cutting off public funds 'would amount to a unilateral change in placement.' Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 199–200 (2d Cir. 2002) (quoting Zvi D. by Shirley D., 694 F.2d at 906). Mackey then cited Susquenita with approval, reaffirming that Congress' policy choice was for the child to remain in the current placement at public expense during the dispute. Mackey ex rel. Thomas M. v. Bd. of Educ. For Arlington Cent. Sch. Dist., 386 F.3d 158, 160–61 (2d Cir.), supplemented sub nom. Mackey v. Bd. of Educ. For Arlington Cent. Sch. Dist., 112 F. App'x 89 (2d Cir. 2004). And the Second Circuit later summarized that 'Congress' policy choice was that a child is entitled to remain in his or her placement at public expense during the pendency of an IEP dispute, regardless of the merit of the child's IEP challenge or the outcome of the relevant proceedings." Ventura de Paulino v. New York City Dep't of Educ., 959 F.3d 519, 529 (2d Cir. 2020)." ECF No. 59, at 2.

That principle is decisive here. DOE has not obtained a stay. Yet, through continued nonpayment, it has accomplished the practical suspension of pendency services, and as of Monday, that self-effectuated stay will prevent these six Students from

traveling to school or attending it at all. McGuinness Decl. ¶¶ 3–7.

6. The New Monday Facts Satisfy Even the Standard the Court Applied.

On March 5, the Court stated that it did "not find that the showing of imminent loss of services under Mendez, or, in the preliminary injunction terms, irreparable harm has been made." Mar. 5, 2026, Hr'g Tr. 129:16–20, Ex. B to Dkt. 29.1, No. 26–523. The difficulty with that conclusion is no longer only legal; it is now factual. The feared interruption has matured into a date-certain service termination on the next school day. McGuinness Decl. ¶¶ 3–7.

Under the Court's own formulation, irreparable harm requires an injury that is "not remote or speculative but actual and imminent." Mar. 5, 2026, Hr'g Tr. 127:13–16, Ex. B to Dkt. 29.1, No. 26–523. That is what now exists. Losing nursing on Monday is actual and imminent. And because the record establishes that nursing is required for safe transportation and school-day attendance, the resulting harm is not compensable by a later monetary award alone. Once the Students miss school or lose access to their stay-put programs because medically necessary services are no longer available, the educational continuity protected by § 1415(j) has already been disrupted. See Mendez, 65 F.4th at 64 ("Parents or guardians may still be able to obtain such relief if they establish that a delay or failure to pay has jeopardized their child's educational placement.").

7. Requested Rule 62.1 Relief.

For these reasons, Plaintiffs respectfully request that the Court enter an indicative ruling under Rule 62.1(a)(3) stating either:

(1) That the Court would grant targeted emergency relief if the Second Circuit remands for that purpose, namely an order requiring Defendants to immediately maintain and fund the nursing services necessary for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. to travel to and attend school pending further proceedings; or (2) At a minimum, Plaintiffs' motion raises a substantial issue in light of the post-March factual development that the six Students' nursing services will be discontinued beginning Monday, March 30, 2026, causing them to be unable to travel to or attend school.

Plaintiffs respectfully request emergency relief in light of the Monday-morning interruption described above. If the Court so indicates, Plaintiffs will promptly notify the Second Circuit under Fed. R. App. P. 12.1.

The Plaintiffs thank the Court for its courtesy and consideration.

Respectfully submitted,

Rory J. Bellantoni
Rory J. Bellantoni, Esq. (RB2901)

Cc: All counsel of record via ECF

After considering Plaintiffs' submission and reviewing the record in this case, the Court DENIES Plaintiffs' motion for an indicative ruling under Fed. R. Civ. P. 62.1. As Plaintiffs and their counsel are no doubt aware, Plaintiffs moved for emergency relief in multiple cases in this District based on the ostensibly imminent termination of nursing services. This Court, for its part, convened a lengthy telephonic hearing that made plain the evidentiary deficiencies in Plaintiffs' motion, and it thereafter denied the requested relief. That iBRAIN's nursing services provider would suddenly change its position just a few weeks later to hew more closely to Plaintiffs' litigation strategy causes the Court concern. It is also noteworthy to the Court that this case is the only one in this District in which Plaintiffs and their counsel are moving for emergency relief based on a Monday termination of services. The Court struggles to understand why the Plaintiffs in this case are being singled out. As indicated by its prior rulings in this and other iBRAIN cases, the Court does not believe that emergency relief is warranted because of iBRAIN's managerial shortcomings.

SO ORDERED.

Dated: March 29, 2026
New York, New York

s:/ HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

A-55
APPELLANTS' LETTER TO SECOND CIRCUIT REGARDING DISTRICT COURT'S DENIAL OF INDICATIVE RULING, DATED MARCH 30, 2026

March 30, 2026

VIA CM/ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals
for the Second Circuit
40 Foley Square
New York, NY 10007

Re: Bruckauf et al. v. Aviles-Ramos et al., No. 26–523

Dear Clerk Wolfe:

The Plaintiffs-Appellants respectfully submit this letter to advise the Court of two
developments that have occurred since Plaintiffs-Appellants' letter of March 28, 2026 (ECF No. 29.1, No. 26–523), both of which bear directly on the pending emergency motion.

First, as of this morning, March 30, 2026, 1:1 travel nursing and 1:1 school-day nursing services have ceased for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. These services are therefore no longer merely at risk of interruption—the interruption is now actual and ongoing. See Declaration of Jeffrey Spinner, Esq.

("Spinner Decl.") filed herewith, ¶ 2. This development materially changes the posture of the pending emergency application: the feared injury is no longer
prospective—these Students are now without the critical nursing support required for their attendance and participation at their private educational placement.

Second, on March 29, 2026, the district court denied Plaintiffs' motion for an indicative ruling under Federal Rule of Civil Procedure 62.1. See Bruckauf et al. v. Aviles-Ramos et al., No. 1:25-cv-05679 (KPF), ECF No. 61. The Spinner Declaration identifies limited excerpts from the March 4, 2026, show-cause hearing transcript already before this Court and attached to the Spinner Decl., which demonstrate that the risk of payment-driven cessation of nursing services was expressly acknowledged in that record. See Spinner Decl. ¶¶ 4–13 & Ex. 1; see also Case No. 26–523, Dkt. 13.2 at 153–154 (reflecting that the show-cause hearing was held on March 4, 2026).

The Plaintiffs-Appellants do not suggest that this Court has denied relief or otherwise failed to act. Rather, because circumstances have now changed materially—services that were at risk on March 28 have now been discontinued—Plaintiffs-Appellants respectfully submit this update so that the Court has the most current record while the emergency motion remains pending. The cessation of nursing services on the morning of the first school day after the nursing

provider's warning is no longer a prospective concern: it is occurring now, in real time.

The Supreme Court has explained that where the practical effect of withholding injunctive relief carries "serious, perhaps irreparable, consequence[s]" that can be "effectually challenged only by immediate appeal," immediate appellate intervention is warranted. Carson v. Am. Brands, Inc., 450 U.S. 79, 84 (1981). That standard is met here: these six medically fragile Students require 1:1 nursing to travel to school and remain there throughout the school day; that nursing has now ceased, and no adequate remedy exists short of an order compelling its restoration. Absent prompt intervention by this Court, these Students cannot continue in their current educational pendency placement at their private school. The Spinner Declaration is provided so that the Court has clear, relevant information confirming that the Students' harm is real, immediate, and ongoing.

Plaintiffs-Appellants respectfully ask the Court to consider the attached declaration and the materially changed factual posture regarding the pending emergency motion and act as quickly as the Court deems appropriate.

Respectfully submitted,

Rory J. Bellantoni
Rory J. Bellantoni, Esq. (RB2901)

Cc: All counsel of record via CM/ECF

A-59

DECLARATION OF JEFFREY ARLEN SPINNER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

OLIVER BRUCKAUF, et al.,
Plaintiffs-Appellants,

-against- No. 26-523

MELISSA AVILES-RAMOS, et al.,
Defendants-Appellees.

----------X

DECLARATION OF JEFFREY ARLEN SPINNER

I, Jeffrey A. Spinner, Esq., pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney with Liberty & Freedom Legal Group, counsel for Plaintiffs-Appellant in this matter. I submit this Supplemental Declaration in support of Plaintiffs-Appellants' supplemental emergency submission to the Court.

2. As of this morning, Monday, March 30, 2026, 1:1 travel nursing and 1:1 school-day nursing services have ceased for Students E.B., H.C., R.L., S.C., L.S., and S.J.D.

3. On March 29, 2026, the district court denied Plaintiffs' motion for an indicative ruling under Federal Rule of Civil Procedure 62.1. The district court stated:

"As Plaintiffs and their counsel are no doubt aware, Plaintiffs moved for emergency relief in multiple cases in this District based on the ostensibly imminent termination of nursing services. This Court, for its part, convened a lengthy telephonic hearing that made plain the evidentiary deficiencies in Plaintiffs' motion, and it thereafter denied the requested relief. That iBRAIN's nursing services provider would suddenly change its position just a few weeks later to hew more closely to Plaintiffs' litigation strategy causes the Court concern. It is also noteworthy to the Court that this case is the only one in this District in which Plaintiffs and their counsel are moving for emergency relief based on a Monday termination of services. The Court struggles to understand why the Plaintiffs in this case are being singled out. As indicated by its prior rulings in this and other iBRAIN cases, the Court does not believe that emergency relief is warranted because of iBRAIN's managerial shortcomings."

(Bruckauf et al. v. Aviles-Ramos et al., No. 1:25-cv-05679 (KPF), ECF No. 61).

4. Attached hereto as Exhibit 1 is a true and correct copy of the transcript of the show cause hearing before Judge Katherine Polk Failla.

5. Although the transcript cover reflects March 3, 2026, the hearing itself was actually held on March 4, 2026. The Second Circuit record reflects that, on March 3, 2026, the district court set a show cause hearing for March 4, 2026, and the district court

minute entry states: "Show Cause Hearing held on 3/4/2026." See Case No. 26-523, Dkt. 13.2 at 153-154.

6. At that hearing, B&H's COO, Chesky Jacobowitz, testified: "There was delay, but not to this extent. I don't think so I ever had this amount delayed." Ex. 1 at 41.

7. Mr. Jacobowitz also testified: "For the last eight months since July, I didn't see a payment ...." Ex. 1 at 42.

8. He further testified: "I need to see some payments. I should be able to continue with the business." Ex. 1 at 42.

9. Mr. Jacobowitz also testified regarding counsel's inquiries after the February 19, 2026 emails: "They tried to verify if I'm about to stop services. I told them I am." Ex. 1 at 53.

10. Counsel for B&H, Andrew Kinkaid, then confirmed on the record: "in the case where there's no payment ... it is their intention to cease providing the services." Ex. 1 at 57.

11. Mr. Kinkaid also stated: "The fact that B&H is being hurt by the delays in payment is real. It has not received, literally ... millions of dollars.... [T]hey have become frustrated and ... made decisions to cut their losses ... " Ex. 1 at 63-64.

12. Judge Failla herself stated during the hearing: "He's not working for free. He shouldn't be working for free." Ex. 1 at 79.

13. Judge Failla also stated: "You should not take solace and you should not take comfort in what Mr. Jacobowitz said because, at some point, they are going to pull that trigger ...." Ex. 1 at 80.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: March 30, 2026
New York, New York

/s/ Jeffrey Arlen Spinner
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TRANSCRIPT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x
OLIVER BRUCKAUF,et al.
Plaintiffs,
v. 25 Civ. 5679 (KPF)
MELISSA AVILES-RAMOS, et al.
Hearing
Defendants.
----------x
New York, N.Y.
March 3, 2026
3:00 p.m.

Before:
HON. KATHERINE POLK FAILLA,
District Judge

APPEARANCES
LIBERTY & FREEDOM LEGAL GROUP
Attorneys for Plaintiffs
BY: RORY J. BELLANTONI

NEW YORK CITY LAW DEPARTMENT
Attorneys for Defendants
BY: KIMBERLY L. ROC

OVED & OVED LLP
Attorneys for Witness
BY: ANDREW KINKAID

(Case called)

MR. BELLANTONI: Good afternoon, your Honor. Rory Bellantoni for the plaintiffs.

THE COURT: Good afternoon to you, sir. Do I understand, is someone assisting you this afternoon?

MR. BELLANTONI: No, your Honor; just me.

THE COURT: Well, I ask, sir, only because I received some materials from Mr. Spinner earlier today; I thought he might be joining you, but of course we're happy to have you. Representing the defendants this afternoon.

MR. BELLANTONI: I'm sorry, your Honor. I just want to let you know, he's in front of Judge Cronan at 2 o'clock, so he wasn't going to be able to make this.

THE COURT: Of course. I take no offense, sir. Thank you. Representing the defendants this afternoon, please.

MS. ROC: Good afternoon, Your Honor. Kimberly Roc on behalf of the defendant.

THE COURT: Ms. Roc, you'll excuse me. You're coming through quite faintly right now. I'm hoping I'll be able to hear you a little bit better. If I have difficulty, I will let you know. And Ms. Roc, were you a party to the proceedings before Judge Cronan this afternoon, or was that a colleague?

MS. ROC: That was not me, but I'm not sure -- (Inaudible)

THE COURT: Ms. Roc, we're having real difficulty hearing you. And while I can fake it, our court reporter cannot. Are you able to call in on another line?

MS. ROC: Just bear with me one moment. Maybe it's my headphones. I can take them off. Just bear with me one second.

THE COURT: Thank you very much, fair enough. Not at all.

MS. ROC: Hi. Good afternoon. Are you able to hear me better now?

THE COURT: So much better. All better, Ms. Roc. Thank you.

MS. ROC: No problem.

THE COURT: I know that you, your office has multiple cases. My understanding is that Judge Cronan, Judge Abrams, and perhaps other judges, and I have received similar TROs regarding the possible cessation of nursing services. And I understood Judge Cronan's hearing was on that motion this afternoon. I thought it might be over, but I cannot say for sure. So, were you aware of that, Ms. Roc?

MS. ROC: Yes. I think that there was one this afternoon with someone from my office. It's my understanding there that's at least seven TROs pending in my office right now at minimum. To my knowledge, I think it's still going on; I haven't heard back from my office yet.

THE COURT: All right. Well, I can find out later. It's not dispositive of this issue. Thank you. I also understand I have on the line Mr. Kincaid. Mr. Kinkaid, this is Judge Failla. Are you able to here me, sir?

MR. KINKAID: I am, your Honor. Good afternoon.

THE COURT: Good afternoon, and welcome, sir. And I understand that you are appearing with your client, Mr. Jacobowitz. And I apologize if I'm mangling the name. Have I gotten the name correct, sir?

THE WITNESS: Yes, that's correct.

MR. KINKAID: Yes, you have.

THE COURT: Thank you. Mr. Jacobowitz, this is Judge Failla. Are you about to hear me, sir?

THE WITNESS: Yes.

THE COURT: Thank you. Good afternoon to you, sir, and good afternoon to all of you. Yes, this is a short schedule, but that's what happens when a TRO is filed. I do have a couple of questions, and then I would like to question Mr. Jacobowitz just to get a sense of well, how we found ourselves here. Mr. Bellantoni -- actually, you know what, perhaps my first question is better directed to Ms. Roc. Excuse me. Then I'll talk to you, sir. Ms. Roc, I received, overnight, a reply brief that was filed by Mr. Spinner of the Liberty and Freedom Law Group, and I wanted to be sure you had seen it. Have you?

MS. ROC: Yes, I have.

THE COURT: All right. May I just understand your perspective, please, on the current status of the six students who are at issue? And we can go -- I'm looking, at this exact moment, at Mr. spinner's reply brief. So, with respect to the student, initials L.S., let me understand what your position is, please.

MS. ROC: You said L.S.?

THE COURT: L.S.

MS. ROC: Yes. Okay. In regards to student L.S., our position is that DOE is implementing pendency in due course. And that I saw that last night, in reply, plaintiffs actually conceded that they received authorization from the implementation unit adding pendency payment services through April 30, 2026, so I believe that payment is underway.

THE COURT: Okay. And you would know this better than I: Between the authorization and the actual cutting of check or transferring of funds, do you have a sense of how long that takes?

MS. ROC: I can't say for sure. I don't want to, I guess, tie myself to a certain timeline. Usually, it's not more than seven to ten days, but I can't say for sure, because I know that sometimes it does take time and that it takes time for the I-Unit to process in the ordinary course of getting the right documentation, et cetera.

THE COURT: Okay. For the student H.C., I'm understanding that there was an outstanding request for information from H.C.'s counsel. Was that information provided?

MS. ROC: That information, to my knowledge, has not been provided yet.

THE COURT: May I have a sense, please, of what that information is?

MS. ROC: Sure. As far as student H.C., it was DOE's position that they were able to provide OPT and that there needed to be a distinguished -- there needed to be a payment made specifically to the school nurse rather than the travel nurse, so DOE had requested certain documentation from plaintiff's counsel that would distinguish the amounts paid between the school nurse and the travel nurse. In response to those requests, it's my understanding that plaintiff would only provided the contract for the nursing services, and that contract doesn't distinguish the amount paid to either nurse. And to date, we've been requesting that information, whether it be through an affidavit or some other form, and we have not received it.

THE COURT: Okay. I should, Ms. Roc, implicit in my questions -- and you'll excuse me for not having asked this sooner -- is, I've seen situations with other judges where the student at issue does not have a pendency order or does not have a pendency order that addresses nursing services. With respect to L.S. and H.C., I am assuming that you are acknowledging the pendency order and the need for nursing services; am I correct in that regard?

MS. ROC: Yes; that's correct.

THE COURT: Thank you. For all six students, has there been a finding made about the need for travel nursing services?

MS. ROC: I'm not sure if there's been a finding for travel nursing on all six students. I will say that two students, E.B. and R.L., don't have orders yet. I don't know specifically -- like I said, for L.S. at least -- or, I'm sorry; excuse me -- for H.C. at least, I know that there's a dispute as to distinguish whether DOE is obligated to pay for both the travel nurse and the school nurse, but for the other students, I can't say for sure there's an issue in regards to that.

THE COURT: Okay. And with respect to students E.B. and R.L., you're saying that there is no pendency placement for the current school year, but you're not disagreeing with plaintiff's assertion that the last agreed upon placement was at iBrain; am I correct?

MS. ROC: Yes. But I would just point -- I mean, for E.B. and R.L., it's our position that no orders have been issued, so the pendency regarding nursing still needs to be, I guess, litigated at the administrative level. For E.B., I would just point out, specifically, for the Court that plaintiffs' own filings less than a month ago in regards to E.B., they had filed a status update on February 12 and in that status update, it said for E.B. under nursing owed, it said not applicable. But for some reason the current TRO does say that E.B. is at risk of losing nursing services unless over $300,000 is paid towards that student.

THE COURT: Okay. Thank you.

MS. ROC: But other than that -- sorry.

THE COURT: No, it's the problem of having a telephonic; I'll just ask you to let me finish speaking. Was there something else you wanted to add with respect to those two students?

MS. ROC: I would just say, other than that, I think, generally, the appropriateness of specific services are still being contested at the administrative level.

THE COURT: Okay. You've heard about the contract between B&H Nursing and the individual students? Have you heard et language of that contract?

MS. ROC: Yes, I have.

THE COURT: My understanding was that the obligation to pay did not kick in until there was an administrative or judicial order regarding pendency. Did you have that understanding as well?

MS. ROC: Yes, I say that obligation -- the contract is that the obligation to pay doesn't occur while the funding aspect is still being litigated, so no obligation to pay exists when the funding is being litigated unless there is a final order, correct.

THE COURT: Okay. And so your argument to me is: Even though the student is remaining at iBrain because it's the last agreed upon placement -- we're nine months in; is that correct?

MS. ROC: Nine months into this current school year?

THE COURT: Yeah.

MS. ROC: Yeah, I guess that would be correct. We are nine months into the current school year.

THE COURT: I'm sorry. I'll ask a more pointed question, Ms. Roc. It would be a concern for me if somehow, either side were able to game the system such that the decision about services wouldn't be made until after the services had been provided for the year. How can I have confidence that that's not happening now?

MS. ROC: I would say -- I mean, at the administrative level, we have no control over when those decisions come out. When they do come out, we'll, of course, meet our obligations. But I think that's tied in the issue with why sometimes these matters are brought prematurely, because we don't control the timeline of the administrative orders being issued. So, yes, it is nine months of the school year, but once those administrative orders come out defining where the pendency is, as far as with the transportation, tuition or nursing, then we will meet those obligations.

THE COURT: Okay. Ms. Roc, I'm going to ask you to speak a little bit slower so I can take better notes, so thank you for that. Also, with respect to S.G. and S.J.D. I guess I would like to understand your positions there. You paid through the end of last year, but you've appealed the pendency orders because of a change in circumstances, a change in costs; is that correct?

THE WITNESS: Yes; that is correct.

THE COURT: And what is the change? What did the change go from, please, and is it just the nursing services or other components of the education?

MS. ROC: It's my understanding that the change has increased about 20 percent, and that increase in the program price has -- what we've argued is that the administrative level is that the increase in cost has, essentially, changed the program. So, because that's being litigated currently at the administrative level, yes, we have paid for S.G. and S.J.D. through December 31 of 2025. However, we have no way of knowing if the DOE's obligation will change, pursuant to our current appeal regarding that increase in cost. That's our position.

THE COURT: I understand that that's your position. I guess I'm not sure that I understand it. I have other cases where you and the plaintiff, the student and the student's counsel, are litigating the pendency. What makes these two appeals different from others?

MS. ROC: I'm sorry. Can you repeat that question? I'm not understanding.

THE COURT: Yeah. No, of course. I feel like I've had other cases where you have said to me that with respect to a particular student, there's still administrative proceedings or there's still judicial proceedings where certain things are being worked out. And I guess I'm hearing you say that the pendency of an appeal somehow changes DOE's funding obligations, and I don't know that that's correct, and that's what I'd like to understand.

MS. ROC: Okay. So, yeah, I would say that the fact with the appeal is, we're arguing at the administrative level that the cost had increased so substantially that it would constitute a change in the pendency. There have been other cases, particularly in Moonsammy, where the Court has found, specifically, that when there's an increase or a change in pendency -- if an order at the administrative level could come out that would change DOE's obligation that would essentially contradict an order that came out at the district court level, it would put defendants in a difficult position to be able to comply with both orders, when a decision as to what the pendency would be and whether that increase in pendency does actually change the program completely. So the outcome of the appeal could change DOE's obligations, which is why it puts us in such a difficult position to have an order at the district court level that would conflict or contract an order at the district level that has not come out yet.

THE COURT: Okay. All right. I suspect I will come back to you in a little bit, but let me please talk to Mr. Bellantoni. Thank you very much. Mr. Bellantoni, how many TROs do you have currently in this district, TRO applications that are predicated on the possible termination of nursing services?

MR. BELLANTONI: Your Honor, I believe there are six. We have two cases in front of your Honor, Bruckauf and Davis; Abreu in front of Judge Abrams; Frias in front of Judge Cronan; and Juca in front of Judge Ho. I don't believe there are any others. There's

a Nichols matter pending in front of Judge Oetken, but I don't know if we moved for a TRO in that case. We may have, so it would be six or seven, your Honor.

THE COURT: Okay. Thank you for letting me know. And I saw in Judge Abrams -- I saw that Judge Abrams issued an order yesterday, sir. Are you working on the Abreu case before her, sir, or is that your colleague?

MR. BELLANTONI: I participated in it, but Mr. Spinner has been working on that case.

THE COURT: Okay. Did you see Judge Abrams' order from yesterday that listed some topics on which she wanted to receive discovery?

MR. BELLANTONI: I did see that, your Honor.

THE COURT: Were you aware of your office filed an interlocutory from that order?

MR. BELLANTONI: Yes, your Honor.

THE COURT: What is the legal basis for interlocutory appeal of a discovery order, sir?

MR. BELLANTONI: Well, your Honor, it's not just the discovery order; it's an appeal. Basically, our position is, if discovery is going to get pushed out 30 days or more, this is an effective denial of the request for a TRO or TI. It's not so much appealing the discovery order; it's that discovery was part and parcel of the -- especially, essentially, it's a denial. She didn't deny it outright, but she certainly didn't grant it. And if we're going to have discovery over the course of weeks or months, we're talking about a deadline of

tomorrow that is in our papers. So the underlying basis is an effective denial of the TRO or TI based on the judge's not addressing it. For instance, your Honor, the first case, she set a briefing schedule that had I believe our reply being filed either the second or the third. When the defendant's filed their opposition, they requested some discovery. She then revised that schedule and said: I'm not going to ask you for your reply now. I'm not going to put this on --

THE COURT: Actually, Mr. Bellantoni, I'm going to ask you to repeat the last sentence. You cut out. And if that happens again, I may have to switch to another phone line, but I want to be sure I'm hearing you as you're making this argument. What you were saying before you cut out was that the schedule for the briefing went very, very close to the deadline.

MR. BELLANTONI: Well, it was -- I believe the second or third when we could submit our reply. And then it changed to an indefinite open-ended deadline where she asked for these questions by, I think, tomorrow, and then the parties should let her know with an email to chambers when we would be available for oral arguments. The defendants posited that would be March 30 or April 1, so the basis of the appeal is not just a discovery order; it is that there was an effective denial of the request for a TRO or PI, so that's what we're appealing to the Second Circuit.

THE COURT: All right. But a couple of thoughts on that. I mean, her order came out on the 3rd. It asked for an outline on or before the 5th, so we were still in time for that. On the 5th, you were to file a letter

regarding relationships between certain entities, so we're still within the time period. And there's nothing here -- I appreciate that DOE may have asked for many weeks out, but there's nothing in the order that suggests that such Judge Abrams wasn't going to decide this in a timely fashion.

MR. BELLANTONI: Well, other than the fact that I don't believe the only discovery she requested was an answer to the questions on Thursday. Her order contemplates discovery going beyond the 5th. She didn't say have the responses in by noon so she could render by the 5th. It's any time on the 5th, which means there's not going to be a decision on the 5th; the soonest it would be is the 6th, but again, the way the order reads, it doesn't seem like that is going to be when the order is going to come down either.

THE COURT: I presume before you filed the interlocutory notice of appeal, you reached out to Judge Abrams' chambers to confirm that she was not going to be deciding your motion by the 5th, because I had every reason to believe that she was.

MR. BELLANTONI: I don't know that that happened, your Honor. I did not reach out to her directly; I don't know if somebody else from the office did.

THE COURT: Okay. And I do see, sir, that you're counsel of record in that case. In addition, by filing the notice of appeal, you've all about ensured that she's not going to decide it by the 5th.

MR. BELLANTONI: I'm not -- I'm not sure if that's a question or just a statement. I don't know how to answer that, your Honor.

THE COURT: That's a question. That's a question. Here's the thing, sir, you're coming to me today telling me that nursing services --(Inaudible)

MR. BELLANTONI: Sorry, Judge.

THE COURT: We'll try this again. There's a lot of feedback on your line, according to my deputy. Let me try this again. Sir, I understand that there is a deadline of March 5, after which, the nursing services will cease and that's the basis of the TRO application. But by filing an interlocutory appeal -- particularly if you did not consult Judge Abrams on this -- you're ensuring that she will not decide the motion by the 5th of March. And I wonder what's going to happen then? Do you have an agreement or an understanding with B&H that nursing services will continue to be provided until the appeal is resolved?

MR. BELLANTONI: Absolutely not. And I think the plan is to file an emergency -- either request with the Second Circuit to either decide this motion, to send it back to the judge, or order that she issue a ruling immediately. We're not going to file an appeal and just leave that hanging, your Honor, so there will be some kind of emergency relief that we will seek with the Second Circuit.

THE COURT: Do you know what docket number has been assigned to the appeal, sir?

MR. BELLANTONI: If you'll hold on one second, your Honor, I can get that. It's 26-494, your Honor, but if I just may, there was an appeal of an old decision and a new one.

THE COURT: Correct.

MR. BELLANTONI: The number that was given to the older case is 26-494. I think the clerk said they're going to consolidate the cases.

THE COURT: Right.

MR. BELLANTONI: So, the number that I have right now is 26-494.

THE COURT: Okay. And you're saying that's the -- right. Because there was a denial of a TRO, and I think that might have been the original decision that was being appealed from it was her docket entry, I believe, 55 and 65. One moment, please, sir. And my thanks for the indulgence that rest of you on the line are giving me --because I see the appeal. I just -- I'm expecting to see that there's an emergency motion on there. No, sir. The last thing -- there's a civil appeal. I see. But you're going to tell the Second Circuit they're going to have to decide something in a master of hours? Okay. That's a thought, but okay; I understand that. So, right now, you have, you have this --basically, the Bruckauf case before me. The Davis case does seem to be a different animal. You have the Juca case before Judge Ho. When is the hearing in that case, sir?

MR. BELLANTONI: Up until the time I got on the line with you, we haven't heard from Judge Ho at all, one way or the other, your Honor, so I don't know.

THE COURT: Okay. Obviously the phone works both ways. Did you reach out to him to see when he could see you or schedule something so that it could be resolved by the 5th?

MR. BELLANTONI: We have, your Honor.

THE COURT: Okay. And nothing yet?

MR. BELLANTONI: No response.

THE COURT: Okay. Well, that is an answer. Thank you. Perhaps now because he's been so patient, I could talk to Mr. Jacobowitz. First of all, Mr. Kinkaid, may I address your client directly, or would you prefer --

MR. KINKAID: You may, your Honor.

THE COURT: Thank you. And of course --

MR. KINKAID: Obviously --(Inaudible)

MR. KINKAID: -- potentially is privileged or something like that, I'll, of course, pipe on it.

THE COURT: And that's not my intention, of course. And Mr. Jacobowitz, I'm saying that I'm not asking you to give away your privileged communications with Mr. Kinkaid, so thank you. All right. Mr. Jacobowitz, sir, your company has been invoked as the basis for several TROs that have been filed in this district. Are you aware of that, sir?

THE WITNESS: I have a little bit of knowledge, not really understanding the TROs and other stuff. I'm

not really involved in the TRO stuff. I'm just managing the business for my boss.

THE COURT: For your boss, okay. Here's what I'd like to do, Mr. Jacobowitz, since you're in the presence of your attorney, Mr. Kinkaid, I'm going to ask you, please, to raise your right hand, sir. Do you swear, sir, or would you prefer to affirm?

THE WITNESS: Affirm.

THE COURT: Okay, then. You will affirm, sir, that the statements that you're about to make in response to the questions that I'm about to ask you are true to the best of your knowledge and belief, sir?

THE WITNESS: Yes, I affirm that.

CHESKY JACOBOWITZ,

called as a witness by The Court,

having been duly sworn, affirmed as follows:

THE COURT: Thank you so much. Mr. Jacobowitz, you just mentioned to me that you're doing your work for your boss. Who is your boss, sir?

THE WITNESS: Mr. Schwartz.

THE COURT: Mr. Schwartz. Does Mr. Schwartz have a first name?

THE WITNESS: Isaac.

THE COURT: Isaac Schwartz. Thank you very much. And the entity, I'm calling it B&H Nursing Services. Is that how you know it, sir, or something else?

THE WITNESS: It's B&H Health Care d/b/a Park Avenue Home Care.

THE COURT: Okay, sir. May I call it B&H, and you'll know what I'm speaking of?

THE WITNESS: Correct.

THE COURT: Thank you. Mr. Jacobowitz, is B&H the only entity for which you work at this time?

THE WITNESS: Yes.

THE COURT: And your position there is chief operating officer, sir.

THE WITNESS: Correct; COO.

THE COURT: Thank you. For how long have you had that position?

THE WITNESS: Approximately 2015.

THE COURT: All right. And, you've worked for Mr. Schwartz all of this time, sir?

THE WITNESS: Correct.

THE COURT: And Mr. Schwartz's position is CEO, or president, or something else?

THE WITNESS: I don't know the name. I think it's CEO.

THE COURT: All right. And I understand you only know what you know, sir. Mr. Schwartz, to the best of your knowledge, was he CEO the entire time that you've been COO, sir?

THE WITNESS: Yes.

THE COURT: And to the best of your knowledge, was he the CEO before that?

THE WITNESS: That's correct.

THE COURT: To the best of your knowledge, did Mr. Schwartz found the company B&H health Care?

THE WITNESS: I wouldn't know that.

THE COURT: Okay. Has he ever told you how long he has been affiliated with B&H health Care?

THE WITNESS: I -- I know how long B&H is around. To be honest, I don't know the exact date. The type of business, yes, but I'm not sure on the dates.

THE COURT: I don't want you to speak to anything that you don't have an understanding about, but to the best of your knowledge, when was B&H founded?

THE WITNESS: I don't know.

THE COURT: Okay, sir.

THE WITNESS: I don't want to give guesstimations, but I really don't know the foundation, the dates.

THE COURT: Okay. All right. I understand. Are you aware that in or about 2008 or 2009, there was an investigation into B&H, sir?

THE WITNESS: If you would mention which ones, I might hear of it, but 2009 I wasn't here, so --

THE COURT: Of course. You weren't there. All right. I was aware that there was both a civil action and I believe there was, as well, an indictment of Mr. Schwartz. Were you aware of that, sir?

THE WITNESS: No.

THE COURT: Okay. That's fine. What is your role as COO? What is it that you do?

THE WITNESS: I oversee -- we do -- B&H has another agency. It's called Nursing Personnel, and I'm just overseeing all the operations.

THE COURT: How many employees does B&H have?

THE WITNESS: Roughly 100. You're talking office employees; correct.

THE COURT: Well, you're a very smart man, because I was going to ask the next question. So, you have 100 office employees. The nurses or the health care providers, would you consider them independent contractors?

THE WITNESS: No, probably employees.

THE COURT: They are your employees. When you gave me the employees, does that include the health care staffing as well?

THE WITNESS: No.

THE COURT: 100 office employees. How many health care providers, sir?

THE WITNESS: I'm going to have to look it up, but it's more than 2,000.

THE COURT: 2,000. Okay.

THE WITNESS: It's more than that, but I don't know the numbers right on me.

THE COURT: Sure. I'm using the term nurse, but maybe I should be more specific. What types of health care providers does B&H offer to companies or to entities?

THE WITNESS: We have LPNs. We do have HHAs, and we do have RNs, and we have a couple of -- all types of different levels of different services.

THE COURT: Okay. And you have more than 2,000 of them? That's what you recall?

THE WITNESS: Yes.

THE COURT: And does B&H provide services to homes, to nursing facilities, to schools, to all of the above?

THE WITNESS: We do service at home. That's --

THE COURT: Okay.

THE WITNESS: That's on the Nursing Personnel side. And we do -- also the Park Avenue, yes, we do home visits, and we do schools.

THE COURT: And schools. Okay.

THE WITNESS: I wouldn't know. I would not really know if there are services in other locations, because this is being done by the coordinators. When there is pay and unless somebody is asking, or -- I'm not involved in the day-to-day services we provide, because we have coordinators and we have a whole team of people working on it, so if we can bill, we give service, so --

THE COURT: Okay.

THE WITNESS: Yeah.

THE COURT: Mr. Jacobowitz, for how many schools does B&H provide health care services?

THE WITNESS: I think so, for the moment, it's three. I think so. I'm not -- I think so, but I'm not sure.

THE COURT: IBrain is one of those schools, sir?

THE WITNESS: Yes, correct.

THE COURT: Do you recall the name of either of the other two schools?

THE WITNESS: No, because I think it starts with iBrain, and afterwards I was not really about.

THE COURT: Okay. I missed that. Could you repeat what you just said, sir?

THE WITNESS: I know iBrain, because I was really involved when we started doing that, nursing service in the school. But going afterwards, I was not so much involved in each and every school, where they have that.

(Pause)

THE COURT: Yes. I'm still here, sir. Are you able to hear me?

THE WITNESS: Yes. I don't have on hand which schools we do serve. IBrain, I do know.

THE COURT: And you know that, sir, because you were involved at the ground level in getting that relationship started?

THE WITNESS: Yes.

THE COURT: Okay. When, approximately, did you first speak to someone that you understood to be affiliated with iBrain?

THE WITNESS: That's a good question. I'll have to go back and see when it started.

THE COURT: Okay.

THE WITNESS: Couple years ago, I don't know. I have to find that.

THE COURT: Sure. Do you think it was more than five? Was it before the pandemic, sir?

THE WITNESS: Yes, definitely.

THE COURT: Okay. Do you think it was before 2015?

THE WITNESS: No. I didn't work in B&H before 2015.

THE COURT: That's right. You were 2016. All right, so, some time before the pandemic.

THE WITNESS: Yes.

THE COURT: How is it that you came to know of iBrain or the opportunity to provide nursing services to iBrain, sir?

THE WITNESS: I was reached out by my boss, somebody's looking to service kids, and I start putting together hiring RNs and the whole thing to establish that.

THE COURT: So am I correct, sir, you make a presentation to the folks with iBrain about the services that you could provide.

THE WITNESS: No. I didn't do that; no. I was asked if I could provide nurses, and I said: Let me get it done. And that's the way it came along. They were looking for somebody could staff the nurse cases, and I jumped in and got the nurses, and then started services.

THE COURT: Okay. And now I just want to be sure I understand what you've said. So, this came about because Mr. Schwartz reached out to you to tell you that there was an opportunity.

THE WITNESS: Yes.

THE COURT: When you responded to that opportunity by providing information about nurses, did you provide that to Mr. Schwartz, or did you provide that to someone at iBrain?

THE WITNESS: He got in contact with someone at iBrain.

THE COURT: Who was you are your point person at iBrain? Who did you talk to about the nursing services?

THE WITNESS: I spoke to another person, and one of the names was Bill, and one of the names was, I think, Pascha. They were the first contact.

THE COURT: And when you spoke to them about providing these services, did there come a point when you agreed upon a contract that you would have or that B&H would have with iBrain?

THE WITNESS: No. We never contract with iBrain. We have a contract with parents.

THE COURT: Okay at any point to time, have you had a contract with iBrain?

THE WITNESS: I do have a contract also later on. I did a contract with iBrain because I do staff from time to time the head of nurses over there. They have a shortage and they have a nursing school. I do I have inroads over there. So there is a contract with iBrain in that particular position, the head nurse.

THE COURT: And you heard Ms. Roc and I speak earlier today, sir. We were talking about the difference between a school nurse and a travel nurse. Did you understand the conversation that we were having?

THE WITNESS: You're asking me?

THE COURT: I am, sir.

THE WITNESS: Okay. Yes, I do understand; yes.

THE COURT: Okay.

THE WITNESS: School nurse.

THE COURT: Sir, the services --

THE WITNESS: Sorry, go ahead.

THE COURT: Go ahead.

THE WITNESS: In my understanding. the school nurse is during the day with the child, and the travel nurse is during the travel. That's what you refer to?

THE COURT: Yes, that's how I'm understanding it as well, sir. So my question is: The contract that B&H has with iBrain is for the provision of -- you said head

nurse; is that the nurse on site at the school during the day?

THE WITNESS: Correct; yes.

THE COURT: And do you currently, sir -- are you currently responsible for providing the school nursing services at iBrain?

THE WITNESS: Yes.

THE COURT: And you'll excuse me for not knowing this, sir, but I don't know whether that requires you to have one nurse or two nurses or five nurses. How many are on site at any one time from B&H?

THE WITNESS: The question is with the nurses for the kids or just the head nurse you're talking about now?

THE COURT: Well, does the head nurse not -- when you say head nurse, I don't know whether the head nurse supervises the staff of nurses. Is that what happens?

THE WITNESS: Yes. My understanding is the school is required to have a head nurse in case something happens, she has to be present all the time.

THE COURT: Yes.

THE WITNESS: And she's overseeing all the other one-on-one.

THE COURT: Okay. Do you provide both the head nurse and the nurses that she oversees?

THE WITNESS: I won't say all of them, but a lot of them.

THE COURT: How many nurses do you understand that she oversees?

THE WITNESS: I wouldn't know that.

THE COURT: Do you think it's more than ten?

THE WITNESS: I guess so. I don't know. I don't know the number how much nurses there are in the school.

THE COURT: Fair enough, sir. I guess the better question is: Do you know how many B&H nurses she supervises?

THE WITNESS: That's -- I also wouldn't know that offhand.

THE COURT: Okay. All right.

THE WITNESS: Because I don't know.

THE COURT: Okay.

THE WITNESS: Have to go in and do a request just to gather the information, how much kids we have now with the school and how much nurses. I'm not familiar with the day-to-day operations.

THE COURT: That's unfortunate, because you are the person who is on all of these emails, sir. That's why I'm asking you all of these questions. Now, we talked about school nurses. The contracts that are entered into -- okay. Other than that contract for the head nurse and other than providing for some of the on-site nurses -- so, the on-site nurses, is that, again, a contract that B&H has with iBrain, itself?

THE WITNESS: Correct.

THE COURT: Okay. Do you ever any other contracts or agreements, whether they be written or oral, with iBrain or any of its personnel?

THE WITNESS: Not what I am aware of.

THE COURT: Is there someone else in your organization who would be dealing with iBrain other than you?

THE WITNESS: My staff is dealing with the staffing issues or billing issues, but I -- I don't think so. I don't know.

THE COURT: Okay.

THE WITNESS: If somebody does nothing something, I don't know. I have no idea. I know my staff are everyday communication about the students and the staff, but contract, I think so I'm the only one signing the contracts, but I don't know. I don't know if there is another contract or agreement.

THE COURT: So at some point -- now, we've just been talking about the on-site nurses. Now, separately, they are folks that I've referred to as travel nurses. Do I understand that those are individuals that you have a contract with the parent for the provision of those services?

THE WITNESS: Correct.

THE COURT: How many travel nurse contracts do you currently have at iBrain?

THE WITNESS: I wouldn't know that just off my head.

THE COURT: It's very important that I know that answer, sir. Do you think it's more than 100?

THE WITNESS: No. We don't have 100 patients in the school; no.

THE COURT: Do you think it's more than 50, sir?

THE WITNESS: Could be roughly around that, but I don't think so. I don't know. I just don't know the number. But it's not 100; maybe 50. I don't know. I don't know the numbers. I will have to go back and go ahead. Sorry.

THE COURT: Yes. No, I mean, it's got to be more than six, because I've got six and other people have cases. Would you agree with me that it's more than six?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: I will agree that it's more than -- but let me just say that a lot of kids do not need nursing travel. Not all of them are getting nursing travel, so it makes it more difficult for me to go in and look who has a nurse to travel and who doesn't. I know there are kids who did not receive nursing travel, only at the school, so this is going to be something I have to look through each case or, if I was able to sit down with one of my coordinators, get more details numbers that would be required.

THE COURT: But Mr. Jacobowitz, I would have thought that you would only have contracts and information for those students who need travel

nursing services. If they don't need traveling nurses services, why do you have to know about them at all?

THE WITNESS: Oh, okay. I'm sorry. let me explain. There are two parts of it. There's travel and then after school, being with at the school, being with the one-on-one being with the student all day long, so. If they receive traveling, 90 percent I would say they would say with the child all day long in the school. It's a separate thing. Some of the students only require in the school. So, it's -- the traveling is a separate thing of servicing the child while they're at school. We are servicing one-on-one during the entire school hours.

THE COURT: Yes. If a particular student needs nursing services, both at school and in the travel to and from school, is it the same nurse?

THE WITNESS: Correct.

THE COURT: Same, okay. So what you're saying to me is, you'd have to look to see -- and it's because my question wasn't precise, so I appreciate you clarifying that -- you're saying that you would have contracts for the individual provision of nursing services to certain students, and for some of those students it's going to be when they're on site at the school, and for some of the students. it's going to be when they're on site and when they're traveling to and from the school; correct?

THE WITNESS: That's correct; yes.

THE COURT: Okay, then let me ask a revised question, because it's more than travel nurses. How many nurses are you providing for individual iBrain students at this time?

THE WITNESS: Again, I do not have the numbers. More or less, currently, I do not have in front of me, the numbers of how much students I do serve.

THE COURT: Okay. But do you have -- I'm sorry, sir; you cut out for just a second. Do you have even an estimate, understanding that it may be incorrect?

THE WITNESS: I can give you an estimate, but don't hold me on that. It's approximately -- I would say 45 to be safe.

(Pause)

THE WITNESS: -- some stop; some start. I believe the numbers are not stable. Sometimes it's less; sometimes it's more.

MR. KINKAID: If I may, your Honor.

THE COURT: This is Mr. Kinkaid or someone else?

MR. KINKAID: Yes, your Honor.

THE COURT: Okay.

MR. KINKAID: As a point of context, my client and I received the request to be here late yesterday and focused our preparation on the students the issue in this case and the balances at issue here. So, his testimony with respect to matters that are not strictly at issue in the TRO may be less precise. And we apologize for that but wanted to give you and be prepared for the testimony that is most salient here.

THE COURT: No. And I thank you for the clarification, sir. And I know, I'm sure, that Mr. Jacobowitz is providing me the information to the best

of his abilities, and I understand that. Mr. Jacobowitz, is there any provision that you have with iBrain that prevents another entity from providing nursing, on-site nursing services on an individual basis to students? And if that question is very confusing, I can ask it again. What I'm really trying to figure out is, is B&H the only entity who provides on-site individualized nursing services to iBrain students?

THE WITNESS: At the time, definitely not. I know at the moment, I believe there are other agencies, because I cannot serve all the patients. But there was always -- whenever I checked, there was others for competition, competition I always had over there, nurses. So, the last time I checked they had other agencies as well, so we're not the only one.

THE COURT: And you haven't said to iBrain that there's any prohibition on them using other providers of nursing services.

THE WITNESS: Definitely not.

THE COURT: Okay. No. No. This isn't an antitrust case, so don't worry, sir. But, how, then, does a parent decide -- how is the parent to -- parents are given a choice of various nursing services, or you don't know?

THE WITNESS: I have no idea.

THE COURT: Okay. To the best of your knowledge, does any one who has an ownership or managerial interest in iBrain have any relationship, any interest, in B&H Nursing?

THE WITNESS: I have no idea and not what I ever heard about.

THE COURT: To the best of your knowledge, sir.

THE WITNESS: Yes.

THE COURT: Right. You don't know of any relationship, any -- are you familiar with the expression "arm's length," sir?

THE WITNESS: No.

THE COURT: Okay, then. I'm sorry. That's the lawyer in me. All right. Your business dealings with iBrain have been without any personal ties, right? You're saying, the folks at iBrain don't have an interest in your entity. And folks at B&H, you guys to your knowledge, do you have an interest, monetary interest of any type in the iBrain school?

THE WITNESS: To the best of my knowledge, no. I never, ever heard any interest. Not from my company to iBrain and not from iBrain to our company, so to your knowledge, there's nothing in connection of one to each other.

THE COURT: Sir, you have been involved in the provision of nursing services through B&H to iBrain for at least -- for more than five years; is that correct?

THE WITNESS: Correct, yes.

THE COURT: Has the number of students remained roughly the same each year?

THE WITNESS: No. Actually they increased.

THE COURT: Okay. All right. So, at the beginning, can you give me a sense -- I mean, at the beginning, was it maybe five or ten and now it's 45, if you know?

THE WITNESS: I don't remember. We started with one. We started with one. Then, we moved up, every week, every month came another student and another student and I think it's in the 40s I think so, now.

THE COURT: Okay. And your agreement is with the parents. So do you actually, do you meet the individual parents? Do you speak with them on the phone? Do you email with them? How are the contracts executed between B&H and the parents?

THE WITNESS: When we receive a name that this parent is looking for nurses, we receive this from the school. It goes directly to my coordinator, and they contact the parents and start matching up an RN, and once we match an RN, then the child could start school.

THE COURT: And so at this stage, it doesn't sound like you're soliciting; it doesn't sound like you have a person on site at iBrain to tell parents: Please, use our services. You first find out about the need because someone at iBrain or a parent has reached out to B&H asking for nursing services.

THE WITNESS: Correct. That's exactly how it works.

THE COURT: Who is doing the reaching out? Is it a point person at iBrain that's reaching out, or is it the parents, themselves?

THE WITNESS: To be honest, they didn't reach out for years to me because I have a point person in the company.

THE COURT: Yes.

THE WITNESS: And rarely, she would call and ask me and I'm really so busy with everything going on and I'm not involved in the day-to-day operations.

THE COURT: Yes, you did mention that.

THE WITNESS: I have managers and supervisors, and I do do a lot of work for my boss, other stuff, as well, so I have to put the managers that should be involved in day-to-day operations.

THE COURT: Fair enough. I'm sure at some later date we'll have to get that information from your organization. Mr. Jacobowitz, was your work with iBrain the first time that B&H was dealing with the statute known as the Individuals with Disabilities Education Act, or IDEA?

THE WITNESS: I think so.

THE COURT: Okay.

THE WITNESS: I don't recall before, dealing with that.

THE COURT: Okay. The reason I ask, sir, is that: I suspect in your line of work, sometimes payments are being made by a third party; correct?

THE WITNESS: Been mostly -- or it's Medicaid/Medicare.

THE COURT: Right.

THE WITNESS: -- or insurance. We do serve people with disability insurance.

THE COURT: Yes. So let me write that down: Medicaid, Medicare, insurance. And my own experience -- and I suspect it's yours as well -- is that there can be a delay in receiving reimbursement for a service you've paid for; is that correct?

THE WITNESS: Could be a delay.

MS.. PHILLIPS: Okay.

THE WITNESS: And I have already outstanding some, and I had to stop some services as well for people that should come forward. I did stop some services, because it didn't go nowhere and I kept on losing money. Yes, there is sometimes it happened.

THE COURT: Yes. Well, no one is suggesting, sir, that your company is doing their services for free. I completely understand that.

THE WITNESS: Correct.

THE COURT: No, I understand that. And I suspect Mr. Schwartz would be sad if you were doing these things for free. I guess what I'm trying to understand, sir, is: When your company began doing work for iBrain, was there any delay in receiving reimbursement for the services you had rendered?

THE WITNESS: There was delay, but not to this extent, I think so. I don't think so I ever had this amount delayed.

THE COURT: Well, let me, please, understand that, then. So, what do you think -- is it because you have

more nurses at iBrain that the delays are more pronounced? Are the delays longer? I'm just trying to figure that out.

THE WITNESS: I think so both. I didn't see -- for the last eight months since July, I didn't see a payment for these payment patients and I think so it's both. It's more burden on the business.

THE COURT: All right. But is it your present intention to remain in this business, in the business of providing nurses services at the schools, or is it just too much work for your company?

THE WITNESS: No. Absolutely not. If I'm getting the funds, it's my honor to serve these kids and you know, make money for my boss. But definitely I do want it stay in it, but I need to see some payments. I should be able to continue with the business.

THE COURT: All right. And with respect to iBrain, how did your company receive the payments? Were there payments that were directly made to B&H or were they made to iBrain and then iBrain cut the check to you, or something else?

THE WITNESS: No, your Honor.

MR. KINKAID: Your Honor, I just want to make a point of clarification. We're referring to all nurses that serve iBrain students or contracts directly with iBrain?

THE COURT: Well, I guess that's a fair point. I mean, if the issue is -- perhaps I should ask a better question. Mr. Jacobowitz, you spoke earlier about

contracts you had directly with iBrain for the provision of a head nurse and, perhaps, other on-site nurses. And do you recall those discussions?

THE WITNESS: Yes.

THE COURT: Have there ever been any delays in receiving those payments?

THE WITNESS: Which payments?

THE COURT: The payments from iBrain, itself, for the nurses that are provided on-site.

THE WITNESS: I don't know. I don't know. I know it was a time I had to reach out, but I don't remember how long really it was. I got a call from my accountant, from my CFO: This bill is open. And I reach out to the school and the payment comes. So I don't know how long it was, and I don't remember how the amount was. I had it once, I had to deal with iBrain for not giving payment, but this was settled.

THE COURT: Okay. It was one time. In your recollection, sir, it was one time only that iBrain -- (Inaudible)

THE WITNESS: In my recollection, yes.

THE COURT: Okay. However, there were other delays -- and we're now talking about the contracts that have for the provision of individual nursing services to individuals students, and these are the contracts with the parents. Did I understand you to be saying that the delays got worse and got more -- there was more money and more overtime; is that what I'm hearing you say?

THE WITNESS: Yes.

THE COURT: Okay. At what point -- did you ever reach out to iBrain or anyone at iBrain or any of its representatives or attorneys regarding these payments that were owed to you from individual students? Did you ever deal with it through iBrain, or did you always deal with it through the parents?

THE WITNESS: If I dealt with iBrain? No, not really, because -- I don't know. I don't remember dealing with them. I dealt with their attorney. They have an attorney there. I speak with him.

THE COURT: Who is that, please.

THE WITNESS: I don't remember his name. I can look it up. It's -- Irene or somebody.

THE COURT: Irene. There was a person named Irene with whom you spoke. And this is a person you understood to be representing iBrain?

THE WITNESS: No, the parents.

THE COURT: Representing the parents.

THE WITNESS: Yes.

THE COURT: Okay. To the best that you can, sir, I want to understand how we got to the point that you issued the emails that I have seen. And let me just -- I think you know the ones I'm talking about. Mr, Kinkaid, are you aware of emails that I'm talking about? And the ones I'm seeing all appear to have been dated Thursday, February 19?

MR. KINKAID: I believe these were submitted in support TRO; is that correct, your Honor?

THE COURT: Yes, sir.

MR. KINKAID: Yes, your Honor, we're familiar.

THE COURT: Okay. So Mr. Jacobowitz, on February 19, you sent a series of emails to a series of parents, but before you did that, you made some determinations to do that. So let me understand, before February 19, what conversations did you have with anyone internal at B&H -- not with your attorney, of course -- or with iBrain about dealing with the delays in payments?

THE WITNESS: I have with my boss and with my CFO, I have a conversation going back and forth. And I -- I told them I'm going to send out the letter, because then you'll start blames me, but give them the services. And it came a point I felt that there's going to start putting pressure on the parents, and I'm going to lose more money and more money, and I don't think so it's -- it's to go ahead and send out these emails.

THE COURT: Okay. Now, before you sent out this email, did you ever speak or did anyone at your office speak with these parents, individually? Before you sent out the emails did you ever reach out to the parents and say: Hey, what's going to on with your payments? We really would like to see them in a more timely fashion. Did you ever speak with the --

(Pause)

THE COURT: Mr. Jacobowitz, I'm going to ask the question again. I'm just going to ask you to wait until I'm done with the question. At any point before you sent the email, did you or anyone at B&H reach out to any of these parents to try and get their accounts current to try and get these payments made?

THE WITNESS: I do not think so.

THE COURT: Right. You, yourself --

THE WITNESS: I did not reach out --

THE COURT: Okay.

THE WITNESS: -- to them, and I don't think so with any of the office reached out.

THE COURT: Now, if I were a parent receiving this email, I might be a little bit troubled. Weren't you a little bit concerned that it would cause some anxiety or nervousness? I mean, I would have thought that reaching out to them before getting this email would have been the way to go, but you're saying that wasn't the choice that you made.

THE WITNESS: I actually did get calls. I did get calls, and my coordinators have calls from the parents.

THE COURT: After the email or before the email?

THE WITNESS: After the email.

THE COURT: I'm still at the before times. Let me stick with the before times. So, you have conversations with your CEO and with your CFO, and you make the decision that it's gone on long enough,

and you've got to get this money back. Do I understand that correctly.

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: I got the blessing of my boss, and I will do but, yes.

THE COURT: Of course. Of course. But the initial decision was yours, and it was approved by your boss.

THE WITNESS: Yes.

THE COURT: And to your knowledge, sir, you and your staff did not have communications with the parents before those February 19 emails were sent; is that correct?

THE WITNESS: Correct.

THE COURT: And to the best of your knowledge, sir, you did not have communications with anyone at iBrain about these delays in payments. You didn't speak to anybody at iBrain about these deficiencies?

THE WITNESS: I don't know. Maybe I would not say I never spoke. Maybe -- not this time, but I don't know if I never spoke with them about payments. I might have spoken to them in others scenarios, but I don't recall speak to them about it.

THE COURT: Okay. Let me try that again, because it's very important that I understand it this. You say there's a possibility that you may have spoken to iBrain people. What I'm really asking about is: In the time period that we're talking about when you're

making a decision about what to do with these deficiencies, do you recall speaking with anyone at iBrain?

THE WITNESS: I don't recall.

THE COURT: Do you recall speaking with any of iBrain's or any attorneys for the parents, including the folks at the either at the Brain Injury Rights Group or at the Liberty and Freedom Law Group.

THE WITNESS: I think so I include that in the email.

THE COURT: Well, I see that they're on the email, but I --

THE WITNESS: That's the first time I spoke to them.

THE COURT: Okay. Well, how did you know to -- I mean, did you draft this email, sir?

THE WITNESS: Yes.

THE COURT: Are you the one person involved in drafting the email, sir, or did anybody else have involvement in it?

THE WITNESS: I did it.

THE COURT: Okay. Why did you include the attorneys, sir?

THE WITNESS: I was hoping they should hop in and see if they can settle this.

THE COURT: Well, okay. Me too, sir, I've got to tell you, but okay. All right. And the way that you put together these emails was that go into your records

and figure out what was outstanding, include that in the body of the email, and then send the email to each parent, sir?

THE WITNESS: Correct, yes.

THE COURT: How many emails did you send? Are there 45 emails, or are there a few of them?

THE WITNESS: No. I did not hand out to everyone. I sent auto roughly 14, I think so.

THE COURT: 14? One-four?

THE WITNESS: Yes.

THE COURT: Okay. All right. When you sent out these emails, you received responses, presumably. Some of the parents called you, I heard you say?

THE WITNESS: Yes.

THE COURT: They called your coordinators?

THE WITNESS: Called the coordinators, yes.

THE COURT: Were they concerned, to the best of your knowledge?

THE WITNESS: Yes. They keep on sending me texts as well.

THE COURT: Well, yes --

THE WITNESS: Now I keep getting -- and I tell them let me wait. I haven't called today and see what's going to happen afterwards.

THE COURT: Yes. And what information, if any, did your coordinators advise -- what did your people tell the parents?

THE WITNESS: I told them to hold on until the afternoon and see what it's going to be. I can't give them an answer.

THE COURT: Well, sir, I'm sorry. Were these calls today?

THE WITNESS: I got a call -- last week; yesterday, I think so, also. Today I got another call. The coordinator get the messages so they're receiving the calls.

THE COURT: In addition to having called -- you yourself, did you speak to any parents, or was it always your coordinators speaking with them?

THE WITNESS: I really, I don't even know if I ever spoke to a parent. I did, most probably. But no, 99.9 percent did not speak to the parents.

THE COURT: Did you have conversations with anyone at iBrain about these emails?

THE WITNESS: No. Not of my knowledge.

THE COURT: Okay. Did you have conversations with any of the parent's attorneys, including the folks on the call today?

THE WITNESS: Yes. I did.

THE COURT: All right. And was it, maybe, shortly after you sent out the email?

THE WITNESS: I spoke to them two times, three times. They went through the numbers, making sure the numbers were correctly, and we have the brief

conversation about this hearing this morning, I think so.

THE COURT: Okay. So, two to three conversations with attorneys representing the parents, sir?

THE WITNESS: I think so, yes.

THE COURT: In the first of those conversations, did you say that you were discussing the numbers with them?

THE WITNESS: Yes.

THE COURT: And did you --

THE WITNESS: The amount, to make sure the amounts are actual amounts, correct amounts and that stuff.

THE COURT: Okay. They were checking the numbers. They were checking the number of students. They were checking the number of students. They were checking the number -- the arrearages for each student; is that correct?

THE WITNESS: I don't know the name arrearages, whatever we are owed.

THE COURT: Okay. I'm sorry. The money that you were owed.

THE WITNESS: Yes.

THE COURT: Yeah. They were checking how much you were owed and which students; yes?

THE WITNESS: Yes.

THE COURT: As a result of those conversations, did you find that your numbers were wrong?

THE WITNESS: We came up with one student was wrong. We did receive a payment in between.

THE COURT: At any point did the attorneys tell you that you should withdraw these emails or wait or try and negotiate a settlement or something? Did they say anything to you to suggest that you shouldn't go forward with this?

THE WITNESS: They tried. They tried to verify if I'm about to stop services. I told them I am.

THE COURT: Yes. Let me understand that conversation, Did they say something like: Are you really going to withdraw services on the 5th, and you said --

THE WITNESS: I spoke to --

THE COURT: Go ahead, tell me what you were --

THE WITNESS: I spoke to them, I think so it was Friday, maybe. And they asked me what's going to happen. I said I need to know by the 5th whether or not you want to stop services.

THE COURT: And so, that is your plan, right now, sir, that if these payments are not made, you're going to withdraw the services.

THE WITNESS: I'm really thinking so.

THE COURT: Well, I do want to talk about that, sir, because I heard you earlier say, that -- I mean, ultimately, I presume, you want to get paid for your

work. You want to, as you said to me earlier, you want to make money and you also want to keep your boss happy, things that I completely understand. But, if you stop, there's a -- I presume you'd be invoking the termination provision in your agreement with the parents?

THE WITNESS: I have to put it to my attorney, but, yes, I do have to go through the process the right way, but I do want to stop the services.

THE COURT: Now, for some of these students we were just talking today, I understood your agreement to say that there wasn't an obligation to make payments while they were awaiting an administrative or a judicial decision about pendency. Did you understand that that's part of your agreement with the parent?

THE WITNESS: Actually, it was a little bit of a surprise to me. Last time I looked through the contract was we created the contract. And I was about to go look over the contract once we are done with this hearing, but it was a surprise to me, actually.

THE COURT: Because here's what I understood, sir. I understood that there was a provision -- and I will try and pull it up as I am talking with you -- that says, in substance, that while awaiting a decision, that the payment --I'm saying it all wrong, so let me say that correctly. All right. What I'm saying is, a provision that says that you agree to suspend payment obligations until an interim or final administrative or judicial decision is made obligating third party to pay all or part of fees. That's the language from the

agreement, sir. And I've got two students here for which there isn't an administrative or a judicial decision, so I'm not really sure that it's really fair for you to drop them, just saying. I've got somebody else who actually has -- the payment's been authorized, so I'd hate to see you cut off your nose to spite your face by terminating that relationship. Because I'm assuming, sir, termination is permanent; right? If you stop, you're not starting again; correct? Because you can't stop and start with these students.

THE WITNESS: I guess so.

MR. KINKAID: Your Honor, if I may.

THE COURT: Yes, Mr. Kinkaid.

MR. KINKAID: There are certain points here that I believe are more properly directed to the company as a whole and on which Mr. Jacobowitz may not be authorized to speak on behalf of the company as a policy matter. With respect to interpretation of the contract, I'm happy to jump in this if necessary, but that's a matter outside of Mr. Jacobowitz's canon as a fact witness and his abilities as a non-attorney.

THE COURT: Sure, Mr. Kinkaid, let me be as transparent as I can with you. I have every understanding and respect for Mr. Jacobowitz's doing and the decisions that he's making, and I appreciate that he does not want to provide services for free. I get that. But I'm being told that I need to enter a temporary retaining order requiring DOE to make payments where I have one payment that's been authorized and I've got two folks who don't have an

administrative decision. And I'm very concerned. I would be very sad -- and I think Mr. Jacobowitz would as well -- to hastily end this relationship for that.

MR. KINKAID: I appreciate that, your Honor. I'm just cautioning -- I suppose I'm interjecting on behalf of the witness and also on behalf of the entity that I represent, because he's not the only person who was involved in those decisions, and decisions about how to move forward in the case of sitting here today are not necessarily solely his to make.

THE COURT: Mr. Kinkaid, I absolutely agree with you, and I appreciate Mr. Jacobowitz's time, because he's made clear to me, he's got a lot of things for which he is responsible. and I'm grateful for all the time he's given us. Mr. Kinkaid, then let me ask you: Do you understand that payment is not made, for any reason -- including the fact that DOE can't cut the check that it has authorized -- that your client will stop providing nursing services to those students?

MR. KINKAID: My understanding is that's their intention. The complicating factor is, as your Honor is certainly aware, there's a range of remedies that your Honor could order --

THE COURT: Yes.

MR. KINKAID: -- between fully granting relief that plaintiff seeks and denying it in its entirety, and I think my client would have to parse out any of the middle options wherein there was a partial payment or payment for certain students and not others, or there's an order that payment will be made in a

certain amount of time, all of which would ultimately go to both Mr. Jacobowitz and the CEO, among others, to determine how the company should proceed in light of that decision. I don't think that any of the middle ground options --as I'll sort of broadly call them -- I don't think they've made a final decision, pending the Court hearing today, as to what they're going to do. I recognize that we are in a short timeline, but in the case where there's no payment and no provision or order for payment for any of these students, it is their intention to cease providing the services if there's a different outcome that might change matters, but I would need to discuss with the client as a whole.

THE COURT: Well, of course but I'm just -- sir, what I'm saying is, for the student who's initials are L.S., payment's been authorized through April 30th, and we're just waiting for the check to be cut. I think it would be foolhardy for your client to discontinue services for that student. Do you agree?

MR. KINKAID: Your Honor -- with all due respect, I don't want to make comments on the business judgments of my client.

THE COURT: Yes.

MR. KINKAID: And whether something is foolhardy or wise --

THE COURT: Fair.

MR. KINKAID: -- I think the issue that they face is that: While these are obviously individual students with individual rights that are being vindicated here

-- or, I hope will be vindicated here today -- there is a broader context for my client, which is the arrearage, writ large, from the DOE is becoming substantial. And if there isn't a clear indication that it will be cured in general, they have to evaluate how they're going to continue to do business in the context of the DOE and its provision of financing. If there is an indication from your Honor and/or other judges in this court that certain of the payments will be made by a certain time, that might alter it, unfortunately, for everybody and say: Well, look. We can accept some delay here because we have a clear indication from the Court money is going to be coming. We can continue to do business. We know it would be made seven to ten days. That's fine. We can live with that. At least it's not up to the discretion of the DOE and may never come.

THE COURT: I understand that. And I shouldn't have used the term foolhardy. I think I am just trying to figure out the likelihood that your client would discontinue services. And I need to understand, Mr. Kinkaid, termination here -- when I say termination, I presume they leave never to return; not suspension. It's termination; correct?

MR. KINKAID: That's what I understand, I can't imagine --

THE COURT: Well --

MR. KINKAID: I can't speak to whether or not a different contract would be entered into for a different year.

THE COURT: But let me say is differently, because I'm being imprecise, Mr. Kinkaid. The email that Mr. Jacobowitz sent says: We will these to pause nursing service, which is interesting, but which suggests that once payment is made, they'll come back. But the agreement with the parent actually uses the term "termination." There's no provision for the suspension of services, so I'm assuming if money doesn't come in, that B&H will walk from that student, never to return. And I'm trying to figure that out, because if they have 45 students and they are only complaining about, ultimately, a couple of those students, that's an interesting business decision to make. And that is, of course, their business decision to make, but I'm trying to ascertain how likely it is that B&H will walk. That's the concern I have, sir.

MR. KINKAID: I have been told that they are walking without payment. Mr. Jacobowitz can -- I believe testified earlier that that is his -- those are his marching orders. That is what they are here today -- that is the -- that is what we've been instructed by the company as a whole. With respect to the phrasing in the email, I would not say when it was written -- and Mr. Jacobowitz can confirm this, but -- Mr. Jacobowitz is not an attorney and may not have used the most precise language and did not sit down with the contract and site-specific provisions. I think he was indicating in laymen's terms that there would be an interruption in service to the students, such that they could make -- however difficult this might be -- arrangements and be aware of, at least, the fact that there would be such interruption. The consequences -

- you know, how that takes place from a legal perspective is not something I think he was explaining to the parents in the context of the email.

THE COURT: Well, Mr. Kinkaid, then let me ask the question again. Is it your client's contemplation that they will pause services or stop services, never to resume them?

MR. KINKAID: At least under these contracts, it would have to be a cessation.

THE COURT: Yes.

MR. KINKAID: There may be other contracts in the future, but I can't speak to whether or not such an arrangement would come to pass.

THE COURT: Yes, this I understand. And Mr. Kinkaid, let me just be more, again, incredibly transparent, because it's an issue that causes the judges in my district a lot of concern. The iBrain entity has a lot of what I will very glibly refer to as incestuous relationships. The founder of the school also has a role in the law firm that represents the parents, and the wife of the founder of the school has an interest in the transportation services. I need to understand -- and I'm therefore asking you to confirm -- that there are no relationships, no side deals, no kickbacks, no nothing, between B&H and its management and the iBrain institution and its management.

MR. KINKAID: Your Honor, I can only speak to personal knowledge, but -- and I've only been before you this once, I believe, but take me at my word; there

is no arrangement that I'm aware of to the effect. I'm not aware of any shared ownership or kickbacks or however you want to term it. I believe Mr. Jacobowitz testified that he was also unaware of any such incest, as you might phrase it, but that's the extent of my knowledge.

THE COURT: All right. And perhaps you may know this, Mr. Kinkaid. For many of us in this district -- I mean, for this case, this probably the second or third TRO application that I've received saying: If you don't make these payments, we will go under. Some of my colleagues have received three and four TROs. So if you're familiar, Mr. Kinkaid, with the story of "The Boy Who Cried Wolf," there is a skepticism with which we view this, because we've been told repeatedly over a period of years that if we don't force the payments on the part of the DOE, if we don't have iBrain cut the line, as it were, something horrible will happen. And it hasn't happened yet, so we're trying to figure out why this time, it's different.

MR. KINKAID: Respectfully, your Honor, I have not appeared in the heavy, heavy, majority of the iBrain cases and can't speak to all of them. The best answer I can give you --and I mean this with all candor -- is that iBrain has been kept going by the eventual late payments by the DOE.

THE COURT: Yes.

MR. KINKAID: I can't speak to its ongoing finances. I can't speak to all of the intricacies of the accounting. But, in my experience, ultimately, after severe pressure from iBrain and the courts, DOE eventually

gets around to p aying, and those payments, as they come, eventually keep iBrain going. It is not -- the precarity of the situation is a consequence of the delays in funding to iBrain, not a consequence of iBrain inventing circumstances.

THE COURT: Well, all right. That's not been my review of the record, but I understand that, and you're saying your situation is different.

MR. KINKAID: Your Honor, all -- yes, for several reasons. First and foremost, B&H is -- and I will confirm to you my understanding and aver to you as an officer of this Court and as Mr. Jacobowitz testified earlier, I'm aware of no connection, financial, ownership, otherwise, between B&H and iBrain TV.

THE COURT: Okay.

MR. KINKAID: The fact that B&H is being hurt by the delays in payment is real. It has not received, literally --and solely in this case, literally millions of dollars. I'm not saying B&H is going to go under tomorrow, but there is a point at which this becomes a business decision that they have to make. And they have become frustrated and, you know, made decisions to cut their losses if this is not rectified.

THE COURT: Right. And these are decisions that you're telling me are being made independent of any, any input or involvement of anyone at iBrain.

MR. KINKAID: Your Honor, as Mr. Jacobowitz testified, this came about from a review of his or the company's records and being alerted to the fact that there were substantial arrears in certain cases, in the

cases of certain students. He noticed that there were hundreds of thousands of dollars owing on these accounts that have been outstanding for, at the time that he sent the email, month and a half. And it's not -- he sent the emails that he sent because he, correctly, I think -- just, as a matter of practice in his role -- did not want to get his boss and other members of the company mad at him for failing to collect. And so he was alerted from members of the company that this was outstanding. They agreed to take measures to alert people that they were in arrears and that they should take whatever measures they could to correct it and that if not, service might pause, cease, whatever word you want to use, but there would be an interruption -- to use the generic term -- in that service.

THE COURT: Okay. No, I understand. All right. Then I will start this again. Mr. Kinkaid, I appreciate the discussion we've just had. And just returning to Mr. Jacobowitz, Mr. Jacobowitz, you mentioned to me earlier in our conversation that there were two other school, perhaps, for which you were providing nurses servicers, but you did not have the same degree of involvement with that; am I correct?

THE WITNESS: Correct, yes.

THE COURT: Okay. And have you had instances of delayed payments in those schools, sir?

THE WITNESS: Yes.

THE COURT: And are they comparable to the delays you've got with iBrain?

THE WITNESS: To be honest, I don't know. I don't know which of these students are in which school, to be honest.

THE COURT: Okay.

THE WITNESS: I don't know if all these students are in iBrain or in the other.

THE COURT: Okay. Fair enough. Okay. But, let me ask a more pointed question, Mr. Jacobowitz. Are you going to do this with the other two schools, too?

THE WITNESS: Yes. If it's not moving forward, I'm going to have to do something, and I'm going to have to consider what my next step is. Yes.

THE COURT: Okay. Okay. I understand that.

THE WITNESS: To be honest, I jumped the gun. I jumped the gun sending out this email. I was frustrated, and again, as my attorney says, I'm not a solo decider on it, but my boss agreed to hand out the email, and I really think that's the right thing to do if we're not getting payment.

THE COURT: And Mr. Jacobowitz, I'm not disagreeing with you, sir. And I do appreciate how frustrating it can be to wait for payments. But in this situation where the process is ongoing and there seems to be at least some authorization, I'm really trying to figure out how likely it is that you're going to walk and perhaps the answer today is that you -- that you don't know; you may. But I also appreciate Mr. Kinkaid is very thoughtful in saying that it's not, ultimately, a decision you would make. Mr. Kinkaid,

I was given to understand that B&H is owned by a relative of the founder of iBrain. You're saying you have no knowledge of that, sir?

THE WITNESS: No, no idea.

THE COURT: Okay. And Mr. Bellantoni, I know you've been listening in on all of this. Sir, do you have any knowledge that there's a relationship between the owner of B&H and the owner of iBrain, the founder of iBrain?

MR. BELLANTONI: No, Judge. I have no knowledge of that. I know we've discussed Sisters Transportation and the school. I know of no relationship. And in fact when I've inquired, I'm told there is no relationship between folks at iBrain and B&H as far as a familial relationship or otherwise. That's what I'm told, Judge. And I know of no relationship -- brothers, sisters or otherwise, cousins -- I don't know that Mr. Schwartz is related. I don't know if he is. I don't believe that Mr. Jacobowitz is. I don't know that. I'm unaware of that. I would tell you that's not true, but all I can tell you is that I'm not aware of that, and if I were, I would certainly tell you, Judge.

THE COURT: I imagine you would, because you have a number of cases before me and want to keep a good relationship. Mr. Jacobowitz, I appreciate so much of your time this afternoon. I'm just going to ask you to give me a moment. I want to review the notes that I've taken to make sure that there isn't a question that I meant to ask you and have not asked you. So, just hold on for one moment, please.

(Pause)

THE COURT: All right. Mr. Jacobowitz, I have checked my notes. I have asked all the questions that I wanted to ask. I thank you and Mr. Kinkaid for your time this afternoon, and I do appreciate the perspective that you brought to this proceeding. I do have some questions for the attorneys. If you and Mr. Kinkaid would like to drop off of the call, you're invited to do so. I suspect -- Mr. Kinkaid, this is really directed more to you, sir -- I suspect I'll be giving my decision early tomorrow and not this evening, so if you're hanging on thinking I'm going to give the decision, I don't want you to be unsatisfied.

MR. KINKAID: No, your Honor. I appreciate the candor. If it's all the same, I prefer to remain, simply so I can apprise my client accordingly.

THE COURT: All right. Thank you. Mr. Bellantoni, let me please turn to you, then, sir. Please, go ahead, sir.

THE WITNESS: This is Mr. Jacobowitz. Can I go now?

THE COURT: Mr. Jacobowitz, you're welcome to go. Your attorney is going to stay on.

THE WITNESS: Have a wonderful day. Thank you so much, your Honor.

THE COURT: You as well, thank you. Mr. Bellantoni, turning to you, please, sir. I understand, from Mr. Jacobowitz, that there are several nursing service providers at iBrain; is that correct?

MR. BELLANTONI: Your Honor, as far as iBrain and the parents, I believe that B&H is the only company that provides the head nurse at the school. I am only aware of students who have B&H Or Park avenue. I know there are students that have nurses provided through Medicaid and Medicare, and I don't know that they come directory from B&H. But I don't know, personally, of any of my other clients that have a company other than B&H. So, if there's a company that provides -- I apologize; I don't know the Medicare or Medicaid, but -- whichever one it is for these students. And not every student is eligible for the Medicaid reimbursement. There are a handful of students that have the one-to-one nursing through the federal program and not necessarily through B&H. Other than that, I'm not aware of any other nursing companies that provide one-to-one nursing to the students throughout the day.

THE COURT: All right, Mr. Bellantoni, it seems to me -- you know, Mr. Jacobowitz is, at his core, a very astute business man, and I understand exactly why he's made the decisions that he's making. But I would assume, sir, if this goes forward and B&H walks with respect to certain students, I have to believe that iBrain is going to remove B&H as a nursing service provider for the school. They can't continue. I mean, B&H is threatening their students with walking. You need much more stability than that, so I'm asking you, if you know, I have to assume that iBrain will simply not use them anymore.

MR. BELLANTONI: As far as using them, Judge, they may not be referrals; correct. Because they don't control -- they may let the parents know that B&H is available, yes, but I don't think they're in a position, iBrain, to terminate them or terminate the contracts with the parents. But certainly this would hurt the business relationship between the school and B&H. If these students don't have the one-to-one nursing care that they need, they can't get to school. If they can't get to school, then it causes a whole host of problems beyond --

(Pause)

THE COURT: Mr. Jacobowitz suggested that there was no exclusivity provision at iBrain; is that correct?

MR. BELLANTONI: I'm not aware of any exclusivity provision with any of the services, your Honor. In fact I would say there is no exclusivity provision.

THE COURT: Okay. Then with respect to nursing services, I have to believe that iBrain has other people that they -- other referrals that they can make. They have to have a back up plan here.

MR. BELLANTONI: They may very well. I don't know if they have a backup plan, again, because what they would do is just refer the parents. They're not involved with providing the nursing care. I don't know what the backup plan is if, cross the board, B&H stops providing services to these students and terminates these contracts.

THE COURT: Yes. Well, I understood from my discussions -- and Mr. Kinkaid, you were a wise man

to stay on the call. Mr. Kinkaid, my understanding is: If B&H walks, it walks with respect to the students for whom there are large arrearages but not everybody, but you tell me if I'm wrong.

MR. KINKAID: Your Honor, that's my understanding of the current plan. I don't know what balances will continue to accrue and whether or not the decision that B&H takes will have broader implications to the relationships with the other students or cause other ramifications. And I don't think that B&H is threatening to cease provides services for students where there's no arrearage.

THE COURT: Right. And that's what I understood, although as we've just been talking about -- Mr. Bellantoni and I have been talking about -- there is a not insubstantial chance that it's going to poison the relationship --

(Pause)

THE COURT: To be student-specific. But Mr. Bellantoni, returning to you, I just can't believe that iBrain would put all of its eggs in one basket. I have to believe that they would have provision for multiple nursing service providers. So, if B&H were to walk away from any particular student, iBrain would have to have somebody else to refer the student to; no?

MR. BELLANTONI: I would hope they would, your Honor. But again, I am not aware of any contingency plan the school has for nursing. I would have to cross that bridge when I get to it, but we're pretty much there. I don't know if parents have a contingency plan

where they can contact other nursing providers. I don't know if there's somebody else that the school is going to recommend. And you know, it gets difficult to go to other providers when they find out that the providers have offers and they're not getting paid. That would be no secret. So, I don't know what the contingency plans are, your Honor.

THE COURT: No, right. But I mean, once again, I presume something has to be in place. You're telling me you agree, but you don't know what it is. All right.

MR. BELLANTONI: I'm not aware of it, Judge. I just raise the issue of -- you know, if the problem here is that providers aren't getting paid, I don't know how you can convince other providers to provide services if they get same problems down the road.

THE COURT: Yes. I do understand that.

MR. BELLANTONI: Your Honor, if I may just briefly, I think one of the issues, in this case is particular, is: you have five of the students, four -- where there have been no nursing payments at all. Some of the other cases -- I know Mr. Jacobowitz mentioned that not all the students got these emails -- that the first half of the school year's been paid and maybe we're fighting over the second half. But in this case, you've got four of the six who have had no payments made whatsoever, because we're arguing over whether there has to be a pendency order versus a final appeal administrative decision that forms the basis of pendency. We would argue that pendency can be owed even if there's not a pendency order. With respect to increases from year to year, a lot of those

cases, it turns out, an increase in tuition or nursing is not a substantial change that results in a change of placement. But in a lot of those cases, the DOE doesn't even offer to pay what last year's rates were or the rates from two years ago and then we can litigate the ten percent increase. It's a cessation across the board, which leads to a case like this where four of these six students have nothing paid from last July until now with respect to nursing.

THE COURT: Right, but once again --

(Pause)

MR. BELLANTONI: Hello?

THE COURT: I'm still here.

MR. BELLANTONI: Okay.

THE COURT: One moment, please. Mr. Bellantoni, with respect to L.S., I am told that payments been authorized through April 30. I've been told that it's in process. Why should I grant a TRO as to L.S.? Why should I L.S. jump the line when it's been authorized?

MR. BELLANTONI: Your Honor, if it's been authorized and it's actually going to be paid, I'm sure there's an argument some folks would like me to come up with. But the only thing I would say is, if your Honor were to issue part of an order that: Now that it's been authorized, it will be disbursed, shall be in the normal course, at least Mr. Jacobowitz can rely on the fact that it's coming in seven or 14 days. We've had instances where money is called back from the authorization process -- I don't think anybody would

do it here with your Honor involved, so perhaps that order isn't necessary -- but I'd be fine, your Honor. And I think there was a discussion. I don't know if Mr. Kinkaid said it earlier. You know, payment is part of the relief we're looking for, partial payment, or even an order that Mr. Jacobowitz and his company can take to the bank that there will be payment within 14 days. I'll give you 14 days to pay it in due course, but they know they're not going to be waiting until July for this payment to be made and cleared -- because the authorization and payment process is sporadic or erratic. There are times when payment is made within a day of authorization; then there's times when it's seven to 14 days. We don't know why. There have been one or two instances in the past couple of years where money is called back after his approved for disbursement. So, if it's authorized and it's actually going to be paid, then I agree with your Honor, perhaps that emergency immediate relief isn't necessary. I think that's where I stop, Judge.

THE COURT: Okay. Oh, no. Stop.

(Pause)

THE COURT: -- an interim or final administrative or judicial decision. I don't have that here sir, do I?

MR. BELLANTONI: Your Honor, the interim or final decision is -- we do have -- let me see who it is. I think --well, Lindsey Sa- --

THE COURT: Sorry, sir. I need initials, please.

MR. BELLANTONI: I'm sorry.

THE COURT: H.C., sir -- H.C. is because you guys -- because they won't give the right information. I'm not going to talk but about H.C. I'm talking about E.B. and R.L.

MR. BELLANTONI: But, your Honor, I was going to say: There's nothing in the pendency order that requires that. The pendency order in the FOFD says: Nursing services. Parents seek pendency funding for one-to-one nursing, pursuant to the nursing services contract. And they say: Student is entitled to the one-to-one nursing. At the end it says: DOE retains the right to determine how to implement, but at the beginning of the process, not when the school year over. As far as the other students, your Honor, S.J.D. has an uninformed FOFD that forms the basis of pendency; e.V. has an SRO decision, 23-238; R.L., 25-125 is a final administrative order. What I would argue, Judge, is -- and again, I'm not part of drafting these contracts and so forth; I haven't had to enforce one -- but if interim or final orders, these orders finding iBrain to be an appropriate placement, an SRO decision from last year that forms the basis of pendency for this year is a final order, pendency orders are interim orders. My understanding is that this really pertains to students who came to iBrain --

(Pause)

MR. BELLANTONI: -- have never had any kind of decision in the IDEA context, in that case, there's no interim; there's no final. I don't know that anything in the agreement says it has to be an internal final decision issued subsequent to the filing of a DPC. But

an SRO that decision that forms the base of pendency is an order that requires the DOE to fund albeit as pendency the student placement. My understanding --

THE COURT: Sorry. Sir, please, stop. SC is a SRO decision?

MR. BELLANTONI: The SRO decision is -- E.B. has one and R.L. has one. There's one for F.C. as well, Judge. And then.

THE COURT: I don't have an S.F.C. I have an F.C.

MR. BELLANTONI: I apologize. F.C. yes, Judge.

THE COURT: And there's an unappealed FOFD for S.J.D.

MR. BELLANTONI: Correct, your Honor.

THE COURT: Thank you. Ms. Roc, I appreciate -- look, you wanted information; I got you information. I got it under oath, and you have the record that we now have. With that record in mind, let me understand it to each of these students. when there is a real, perceptible chance that B&H will not provide nursing services to them after tomorrow, why I shouldn't order the other payments. Now let me say to you Ms. Roc, on L.S., I'm not going to the mat on L.S. If you tell me that L.S.'s payment has been authorized and it will be implemented in due course, meaning in the next couple of weeks, I am not going to grant a TRO on that basis. But as to H.C. even though Mr. Bellantoni doesn't believe me, I put the

onus on them to provide me the information that you all need. But let's talk about E.B. and R.L.

MS. ROC: Your Honor, I would say that an order requiring immediate payment should still not be authorized for R.L. and E.B. or for any of the other students. And I would just like to just say that I appreciate that your Honor took the time to ask those questions, under oath, of Mr. Jacobowitz, but from my understanding of his testimony, it's not up to him, the decision to pause the services. He testified that it's not his decision. And then, correct me if I'm wrong -- or Mr. Kinkaid can correct me if I'm wrong -- he also confirmed that it's not Mr. Jacobowitz's decision to pause the services or to terminate the services. Their motion for emergency relief was based on the argument that there is an actual, imminent irrepairable harm that these students are facing, and by Mr. Jacobowitz's own testimony, he said that he might have jumped gun on this or that he might have been too quick to tell the students that they're going to pause the services. Considering the controlling law, that doesn't appear to be an irrepairable harm that's immediate or actual or imminent. From his testimony, he said: I have to go back and talk to my president. I have to talk to the CFO. There's questions about whether to complete termination or pause termination, so I would say that under the factors providing emergency relief or an actual imminent harm, Mr. Jacobowitz's testimony has showed that that's not the case here.

THE COURT: But let me ask this. I mean, he's not wrong if he's been waiting since July for payment and hasn't received it. What do I do about that? I mean, he's not working for free. He shouldn't be working for free. Although I do find these nursing services to be astronomically high and I'm shocked that you guys can't find another provider that's a little bit cheaper than he, but he is saying that at some point, he and his boss, the CEO, and the CFO are going to pull this trigger.

MS. ROC: Yes. He's saying that, but his testimony says that they consider him pulling the trigger. He's saying that it's not up to his decision to make. The motion was based off of his email saying that that was definitely going to happen, and when he appeared today and answered your questions, he wasn't able to say that that was going to definitely occur.

THE COURT: Ms. Ro -- and I say that with all respect -- no. Let me get there first, Mr. Kinkaid. Ms. Roc, you should not take solace and you should not take comfort in what Mr. Jacobowitz said because, at some point, they are going to pull that trigger and problem is, I have to make the decision before they do. It's no good if they stop providing the nursing services. It is no good. So I'm trying to understand. I'm trying to present to B&H, if I can -- and I'm not sure I can, and I'm not sure I should -- at least with respect to some of the students, I know that payment is in the works. But I don't know, for example, with respect to E.B. and R.L., what the situation is. There's an SRO decision. You feel that that does not qualify

as an interim or final administrative or judicial or decision because it's for the prior year; correct, the SRO --

MS. ROC: It's for the prior year.

THE COURT: It's for the prior school year? Well, then --

MS. ROC: Sorry.

THE COURT: That's okay. I'll let you speak.

MS. ROC: No, that's what I was going to say, that it's for the prior year, and because it was a new PCP filed, there's not a new final or interim order for these students. And again, for E.B. specifically, I just want -- I said this earlier and I just want to point out to the Court that from plaintiff's own filings, nursing owed to E.B., they said that it's not applicable to him. From their filing, February 2026; it's ECF No. 46. They filed a status update with the Court, and under E.B.'S update, it says nursing is not applicable. So I just want to highlight that, because now in this motion, they're saying that E.B. is owed thee hundred and -- over $300,000, and that contradicts their status update as to that student. But yes, there is -- the pendency order from the prior year.

THE COURT: Okay. I think I'm sort of showing my hand here. I'm not granting this for L.S. I'm not granting it for H.C., because again, I think that's on the folks at iBrain to provide the requisite information. I don't think that as to E.B. and R.L., I think the amount may be enormous, but I don't think that there is a final administrative or judicial

decision, as the contract requires. But that leaves me with F.C. and S.J.D. Do I not have current -- I have an SRO decision and an unappealed FOFD. That's for this year; correct?

MS. ROC: Yes. I believe that's correct in that both of their cases are being litigated at the administrative level as to F.C. and S.J.D. But we have paid large amounts of money towards their nursing in good faith. There's a question as to what is owed currently, but there has been payments made to both of those students.

THE COURT: Well, payments through December 31; correct.

MS. ROC: Correct. And our understanding of the contract is that it doesn't allow for termination before an interim decision as to the other two students. But for F.C. and S.J.D., those payments were made from December -- through December 31, 2025.

THE COURT: I understand that. I guess I'm a little bit troubled. Perhaps Mr. Jacobowitz had a misunderstanding in saying that he hasn't seen things since July because you're saying payments -- well, you said payments were made for nursing services through December. When was that payment made?

MS. ROC: Bear with me for one moment.

THE COURT: Please. Of course.

MS. ROC: I don't know if I have --

THE COURT: Go ahead.

MS. ROC: I don't know if I have the exact date of when it was paid, but the payments were made probably months ago.

THE COURT: Okay.

MS. ROC: They were made at the time that -- I'm sorry; I don't mean to cut you off. They were made at the time that briefing had been complete on the motion to dismiss. I believe so.

THE COURT: All right. And right now, today, does DOE have any present intention of authorizing additional nursing service payments for F.C. and S.J.D.?

MS. ROC: Your Honor, it's my understanding that we are litigating what they are entitled to at the administrative level and that the payments that we have made so far have been substantial, and because there has been such a substantial increase in their programs that we would need to -- you know, in accordance with the Moonsammy decision, we would need to see what occurs at the administrative level to determine what is required for DOE to pay as to their nursing.

THE COURT: All right. One moment, please.

(Pause)

THE COURT: I see, from your footnote 1, the payments that were made vis-à-vis F.C. and S.J.D. Thank you. Ms. Roc, are there other things you want me to know this afternoon? I ask because we have been -- I have been horrible in keeping our court

reporter for more than two hours without a break, so I intend to finish up very soon, but I don't want to leave anyone with undelivered argument. Is there anything else you'd like me to know?

MS. ROC: Your Honor, I would just highlight for you -- I know you had asked earlier if I was aware of proceedings that were occurring before Judge Cronan and while this conversation was going on, I did receive an update that Judge Cronan denied the TRO in that matter.

THE COURT: Okay.

MS. ROC: Just to update you, I would say that. And just to reiterate my arguments as to the lack of showing of irrepairable harm here, as I mentioned before.

THE COURT: Okay. Thank you very much. Mr. Kinkaid, you wanted to say something?

MR. KINKAID: Your Honor beat me to the punch, and then I'll defer to your insight on that matter.

THE COURT: Thank you very much. Mr. Bellantoni, anything else, sir?

MR. BELLANTONI: Yes, just quickly, Judge, the nursing payments that we discussed were made October 18 for both of those students. I would just point out one difference between this case and Mendez -- although Mendez has not come up, this is Mendez. The DOE agreed, conceded, however you want to say it, they were going to pay for the outstanding pendency services, so the Second Circuit

said if they're going to pay, they could do it in the due course. Here, they've been clear they're not going to pay any additional payments for these two students. And one thing I did want to bring to the Court's attention of just all points, on page 10 of our original brief -- that's at 47-3 -- there is a cite at the bottom of the page to a Donahue v. Mangano case --

THE COURT: Okay.

MR. BELLANTONI: That's an incorrect cite. With all the Donahue cases floating around, somebody must have pulled the wrong site. I just wanted to let your Honor know that Mangano I recognize as the name of the county executive in Nassau. I looked at this case. It is not an IDEA case, so I'm not sure where that cite same from, but I did want to alert the Court to the fact that it was there and it is wrong.

THE COURT: Please don't tell me it's an AI hallucination, sir, because I'm getting those in droves these days.

MR. BELLANTONI: I don't believe it was, because this is a Donahue case. I just think somebody pulled the wrong cite. There are so many "Donahue v." cases. I'm not aware that whoever drafted this used AI, Judge, but it is an incorrect cite.

THE COURT: Thank you so much.

MR. BELLANTONI: It's a real case. I checked it on Westlaw --(Inaudible)

MR. BELLANTONI: It was not a hallucination as a case; it just is an improper cite.

THE COURT: All righty. On that happy note, I have some things to think about. I will get back to you all as soon as I can. Thank you very much for all of your time this afternoon. We'll talk again. We're adjourned.

MR. BELLANTONI: Thank you, Judge. Mr. Bellantoni, get the transcript. Thank you. Be well, everyone.

(Adjourned)

A-140

MEMO ENDORSEMENT FROM DISTRICT COURT DENYING PLAINTIFFS' REQUEST TO ENFORCE PENDENCY, DATED APRIL 3, 2026

April 2, 2026

BY ECF
Hon. Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

Re: Bruckauf et al. v. Melissa Aviles-Ramos et al.
25-cv-05679 (KPF)

Dear Judge Failla:

I am an Assistant Corporation Counsel in the Office of Steven Banks, Corporation Counsel of the City of New York, the attorney assigned to represent Defendants in the above- referenced matter. In accordance with your Honor's individual practice rule 2(C), Defendants respectfully submit this letter in opposition to Plaintiffs' March 25, 2026 letter motion seeking 1)an expedited contempt motion, and 2) accelerated merits discovery and briefing regarding Plaintiffs alleged 42 U.S.C. § 1983 and Monell claims.[1] ECF No. 59. Plaintiffs' requests should be

[1] Nearly identical letter motions for contempt were also made in the following cases over the course of the last 7-10 days: Zayas et al. v. New York City Department of Education et al., 25-cv-7561-AT; Mendez v. New York City Department of Education et

denied because they have failed to establish any basis for contempt, as they do not identify a violation of a clear and unambiguous court order. They likewise fail to adequately plead their claims under 42 U.S.C. § 1983 or Monell. Accordingly, discovery, let alone expedited discovery, is unwarranted. Therefore, for the reasons set forth below, Plaintiffs' application should be denied in its entirety.

Background

As the Court is aware, Plaintiffs have repeatedly, and unsuccessfully, sought expedited relief in this matter. Less than a week after filing the Complaint, Plaintiffs moved for a preliminary injunction, which the Court denied for failure to demonstrate irreparable harm. ECF No. 8; see also Dkt Text Order dated August 14, 2025. Plaintiffs made their second request on October 10, 2025, seeking a preliminary injunction and temporary restraining order; that motion was also denied. ECF Nos. 28-31; see also Dkt Text Order dated October 10, 2025. On February 20, 2026,

Plaintiffs filed their third motion for a Preliminary Injunction, which after full briefing and a conference, was denied in its entirety. ECF No. 47; see also Dkt Txt Order dated March 5, 2025. Most recently, just three days after filing the instant letter motion, Plaintiffs sought emergency relief and an indicative ruling, which the Court denied sua sponte. ECF Nos. 60 and 61. Plaintiffs pattern of exhausting this Court's resources to obtain expedited relief is clear in the record. Despite Plaintiffs' contentions that they

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al., 25-cv-05746-CM-SLC; and Davis et al v. Aviles Ramos et al., 25-cv-7555- KPF

are not attempting to revisit the preliminary injunction framework, the instant motion is exactly another such effort. This is evidenced by Plaintiffs' reliance on the same authorities[2] previously cited to in their motions for a preliminary injunction seeking prospective payment, which Mendez does not permit. Mendez v. Banks, 65 F.4th 56 (2d Cir. 2023). It is evident that the instant motion is yet another improper attempt to obtain expedited relief which Plaintiffs are not entitled to, repackaged as a baseless and unsupported motion for contempt, and
coupled with a request for expedited briefing and discovery on inadequately pleaded and nonviable claims.

Defendants Are Not In Contempt Of Any Court Order

A party may be held in contempt if the moving party satisfies a three-part standard: "(1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner." King v. Allied Vision, Ltd., 65 F.3d 1051, 1058 (2d Cir. 1995); see also Chao v. Gotham Registry, Inc., 514 F.3d 280, 291 (2d Cir. 2008). "A clear and unambiguous order is one that leaves 'no uncertainty in the minds of those to whom it is addressed..." King, 65 F.3d at 1058. Plaintiffs have utterly failed to meet their burden in proving any of the above elements.

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[2] For example: Susquenita School District v. Raelee S., 96 F.3d 78, 84-87 (3d Cir. 1996) and Murphy v. Arlington Central School District Board of Education, 86 F. Supp. 2d 354, 365-67 (S.D.N.Y. 2000).

Plaintiffs' letter motion relies on the meritless assertion that an alleged delay in pendency payments constitutes a violation of a clear and unambiguous court order. Plaintiffs assert such arguments in a letter motion that fails to acknowledge or attempt to meet the legal standard for contempt, and that likewise fails to cite any authority to support their contention. Instead, Plaintiffs rely primarily on nonbinding out-of-District and out-of-Circuit caselaw. Plaintiffs' reliance on those out-of-Circuit decisions, such as Casey K. v. St. Anne Cnty. High Sch. Dist. No. 302, 400 F.3d 508 (7th Cir. 2005) is unavailing. In Casey K. the district issued a new IEP that did not authorize the student's continued placement at the school district's expense, prompting the parents to invoke the stay-put provision to maintain that placement during the dispute. Th[3]at is not the case here, where each student-plaintiff continues to attend iBrain at the DOE's expense. As evidenced by Plaintiffs' previously denied motions for emergency relief, Plaintiffs have failed to present any evidence that the students' placements are at risk.

Moreover, Defendants are not in violation of any court order. Defendants have complied with their pendency obligations and remitted pendency payments as appropriate for students with an unappealed pendency order and an active administrative proceeding through March 31, 2026. Since the filing of the instant matter, some of the underlying administrative cases have concluded, thus ending Plaintiffs' entitlement to pendency, while

other pendency determinations are currently on appeal before the SRO. Further pendency payments where applicable will be made in due course. Plaintiffs' allegations that those payments are somehow insufficient or untimely are in direct contravention of Mendez v. Banks, 65 F.4th 56 (2d Cir. 2023) (Finding that DOE's ordinary payment procedures are in line with the realities of bureaucratic administration. "The DOE receives thousands of funding requests under the IDEA at the start of each school year and spends hundreds of millions of dollars annually to fund placements [...] If each pendency order entitled parents or guardians to immediate payment, school districts would be unable to implement basic budgetary oversight measures, such as requiring receipts before reimbursement." Ventura de Paulino, 959 F.3d at 535 (citation omitted).") Finally, where pendency orders are under appeal with the State Review Office, those orders definitionally cannot be "clear and unambiguous" such that failure to implement them rises to the high standard needed to prove contempt.

In short, Plaintiffs cannot prove contempt because Defendants have not violated any court order. Accordingly, there is no basis for such a finding and Plaintiffs' request for a conference and expedited briefing schedule should be denied.

Plaintiffs Fail to Plead a 1983/Monell Claim

To state a claim under Section 1983 against a municipal defendant, a plaintiff must allege "(1) an official policy or custom that (2) causes the plaintiff to be subjected to (3) a denial of a constitutional right." Torraco v. Port Auth. of N.Y. & N.J., 615 F.3d 129,

140 (2d Cir. 2010) (internal quotation marks omitted) (quoting Wray v. City of New York, 490 F.3d 189, 195 (2d Cir. 2007)); see also Agosto v. N.Y.C. Dep't of Educ., 982 F3d 86, 97 (2d Cir. 2020). Plaintiffs seeking to hold liable a local government under §1983 must prove that "action pursuant to official municipal policy" caused their injury." Monell v. New York City Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). To support the existence of a municipal policy or custom, a plaintiff must provide evidence of "(i) a formal policy officially endorsed by the municipality; (ii) actions taken by government officials responsible for establishing the municipal policies that caused the particular deprivation in question; (iii) a practice so consistent and widespread that, although not expressly authorized, constitutes a custom [...]of which a supervising policy-maker must have been aware; or (iv) a failure by policymakers to provide adequate training or supervision to subordinates to such an extent that it amounts to deliberate indifference to the rights of those who come into contact with the municipal employees." Scott v. Westchester County, 434 F. Supp. 3d 188, 201 (S.D.N.Y. 2020).

Having failed to sufficiently plead the above requirements Plaintiffs still seek an "accelerated schedule for targeted merits discovery and briefing on the already pleaded § 1983/Monell claims." This Court should deny that request or, alternatively, dismiss the claims for failure to state a claim. The complaint is void of any alleged constitutional violations that were caused by an official DOE policy. Rather than identify a "widespread" policy or practice, Plaintiffs offer only a single conclusory assertion that

"Defendants violated Plaintiffs' rights under 42 U.S.C. § 1983 by failing to have adequate policies, procedures, protocols, and training to ensure that the long-standing provisions of the IDEA and New York State special education laws are being implemented." ECF No. 1 at para 276. Given Plaintiffs insufficiently plead 1983 claims, accelerated discovery on this issue would be futile and should be denied.

Conclusion

For the foregoing reasons, Plaintiffs' motion for a conference should be denied in its entirety. Thank you for Your Honor's consideration.

Sincerely,
/s/ KLR
Kimberly L. Roc
Assistant Corporation Counsel

cc. By ECF
Plaintiffs' Counsel

The Court has reviewed Plaintiffs' letter motion seeking (i) leave to file a contempt motion and (ii) accelerated merits discovery on Plaintiffs' claims under Section 1983 and Monell (Dkt. #59), as well as Defendants' above response (Dkt. #64). Both of Plaintiffs' requests are DENIED.

On the contempt issue, Defendants are correct that Plaintiffs have not identified a single Order of this

Court with which Defendants have failed to comply. See United States v. Charmer Indus., 722 F.2d 1073, 1079 (2d Cir. 1983) ("It is well settled that a court may not hold a person in contempt unless he has violated a definite and specific order of the court."); Fendi Adele S.R.L. v. Burlington Coat Factory Warehouse Corp., No. 06 Civ. 85 (LBS), 2007 WL 2982295 (S.D.N.Y. Oct. 10, 2007) ("A party will be held in civil contempt of a court order only upon a showing of 'clear and convincing' evidence of a violation of 'a clear and unambiguous' order of the court." (quoting New York v. Loc. 28, Sheet Metal Workers' Int'l Ass'n, 170 F.3d 279, 282-83 (2d Cir. 1999))).

To the extent that Plaintiffs seek to argue that Defendants' contemptible conduct is a violation of the IDEA's stay-put provision (see Dkt. #59 at 2 (citing Casey K. v. St. Anne Cnty. High Sch. Dist. No. 302, 400 F.3d 508, 511 (7th Cir. 2005) for the proposition that the stay-put provision is punishable by contempt)), they have provided no evidence that students' placements are at risk. Defendants have not raised a remotely colorable claim for contempt, so leave to file a motion seeking such a remedy is DENIED.

On the second issue, discovery is inappropriate because Defendants
wish to move to dismiss Plaintiffs' Section 1983 and Monell claims. (See Dkt. #25-26, 39). In a similar case before this Court, Davis et al. v. Aviles-Ramos et al., 25 Civ. 7555, the Court stayed consideration of Defendants' motion to dismiss until after the
various interlocutory appeals have been resolved. (25 Civ. 7555, Dkt. #57 (citing Dkt. #45)). For that reason,

the Court denied Plaintiffs' near identical request for leave to file a contempt motion and to conduct discovery. (Id.).

In this case, although the Court has not stayed the pending motion to dismiss, there are nonetheless two pending interlocutory appeals. (See Dkt. #31, 53). The Court seriously doubts its jurisdiction to resolve the motion to dismiss while those appeals
are pending. In any event, it does not believe discovery is appropriate while two interlocutory appeals and a motion to dismiss are pending. Consequently, Plaintiffs' motion for accelerated merits discovery is DENIED.

The Clerk of Court is directed to terminate the pending motion at docket entry 59.

SO ORDERED

Dated: April 3, 2026
New York, New York

Hon. Katherine Polk Failla
United States District Judge

A-149
APPELLANTS' LETTER TO SECOND CIRCUIT RE: DEVELOPMENTS TO NURSING, DATED APRIL 2, 2026

April 2, 2026

VIA CM/ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals
for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *Bruckauf et al. v. Aviles-Ramos et al.*, No. 26–523

Dear Clerk Wolfe:

Plaintiffs-Appellants respectfully submit this response to Appellees' letter (Dkt. 49.l) to advise the Court of a concrete development bearing directly on the pending emergency motion: the nursing interruption previously identified as the foreseeable consequence of prolonged nonpayment is now occurring in real time.

First, Appellees' suggestion that the current cessation of nursing services reflects a sudden change in position or merely litigation-driven maneuvering is contradicted by the record already before this Court. Appellees themselves placed that transcript before this Court as Exhibit A to Dkt. 29. l. In the declaration

accompanying that submission, however, Appellees described Exhibit A as "a true and correct copy of the transcript of the March 3, 2026, hearing in this case." The record reflects otherwise: on March 3, 2026, the district court set a show cause hearing for March 4, 2026, and the district court minute entry states, "Show Cause Hearing held on 3/4/2026." Spinner's declaration, therefore, did not place any new transcript or new factual material before this Court, it simply corrected the hearing date and identified limited excerpts from a transcript already submitted by Appellees.

Those excerpts confirm that the payment-driven risk was not a new theory. The March 4, 2026, show cause hearing transcript shows that B&H's COO testified that he had "never had this amount delayed," that he had not seen payment "for the last eight months since July," and that he "need[ed] to see some payments" in order to continue providing services. B&H's counsel then confirmed on the record that, "in the case where there's no payment," it was the provider's intention "to cease providing the services." Judge Failla herself recognized the same payment driven risk, stating: "He shouldn't be working for free," and warning DOE not to "take solace" because "at some point, they are going to pull that trigger." That trigger has now been pulled.

Second, this case is not, and has never been, a request for abstract "fast-tracked" payment. Plaintiffs-Appellants have consistently sought enforcement of

pendency rights and implementation of services that DOE was already obligated to maintain. With fewer than three months remaining in the twelve-month school year, DOE cannot credibly characterize its refusal to fund nursing services since July 2025 as a mere dispute over administrative timing. *Mendez* did not authorize a school district to suspend pendency through prolonged nonpayment and then invoke its own internal process as a defense. On the contrary, *Mendez* expressly preserved relief where a delay or failure to pay has jeopardized the child's educational placement. *Mendez v. Banks*, 65 F.4th 56, 65 (2d Cir. 2023). That is now exactly the posture before this Court. What Appellees previously characterized as a dispute over administrative payment timing has become an implementation failure that prevents these students from accessing the pendency placement to which they are entitled.

Third, Appellees' position remains incompatible with settled stay-put principles. The right protected by 20 U.S.C. § 1415(j) is the right to maintenance of the child's then-current educational placement at public expense during the pendency of the dispute. As the Second Circuit explained in *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199-200 (2d Cir. 2002), quoting *Zvi D. by Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982): "Implicit in the maintenance of the status quo is the requirement that a school district continue to finance an educational placement made by the agency and consented to by the parent before the parent requested a due process

hearing. To cut off public funds would amount to a unilateral change in placement." The present cessation of 1:1 travel nursing and 1:1 school-day nursing means that these six medically fragile students cannot safely travel to iBRAIN or remain there during the school day. That is not a collateral billing issue, it is the functional denial of the placement itself.

Plaintiffs-Appellants recognize the Court is actively considering the pending emergency motion. At the same time, because the Students remain without the nursing services required to access their placement, absent interim relief, the ongoing practical effect is the continued deprivation of their federally protected stay-put rights. See *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981). Each additional school day without nursing services is another day these six medically fragile students cannot access their pendency placement at iBRAIN. That harm is concrete, cumulative, and not fully compensable through retrospective relief alone.

Plaintiffs-Appellants respectfully note, for transparency and record preservation, that should the service interruption continue, the established framework for enforcing these students' federal rights - including application to the Circuit Justice for emergency relief - may require consideration. The adequacy of any eventual remedy and the availability of every avenue to protect these students' federally guaranteed stay-put rights must remain open.

Plaintiffs-Appellants raise this as a candid disclosure of the posture their clients face, not as a challenge to this Court's authority or a suggestion that the Court has acted inappropriately.

For present purposes, however, Plaintiffs-Appellants respectfully ask only that the Court consider the present, concrete posture of the case as it evaluates the pending emergency motion and grant such relief as the Court deems just and appropriate.

Respectfully submitted,

Rory J. Bellantoni
Rory J. Bellantoni, Esq. (RB2901)

Cc: All counsel of record via CM/ECF