No. _____

In The

Supreme Court of the United States

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.,

Applicants,

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,

Respondents.

APPLICATION TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT, FOR TEMPORARY ADMINISTRATIVE RELIEF PENDING DISPOSITION OF PETITION FOR WRIT OF MANDAMUS

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TABLE OF CONTENTS

PARTIES TO THE PROCEEDING

Applicants (plaintiff-appellants below) are 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.

Respondents (defendants-appellees below) are MELISSA AVILES-RAMOS, in her official capacity as Chancellor of the New York City Department of Education, and New York City Department of Education,

RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

Oliver Bruckauf., et al. v, MELISSA AVILES-RAMOS, et. al. 25-cv-05679 (Mar. 5, 2026) (order denying motion for a TRO)

United States Court of Appeals (2d Cir.):

Oliver Bruckauf, et al. v, MELISSA AVILES-RAMOS, et al., No. 25-523 (Mar,16 2026) (order denying injunction pending appeal)

TABLE OF AUTHORITIES

Cases

Statutes and Rules

1. Nature of the Application and Relief Requested

Applicants respectfully apply to The Honorable Sonia Sotomayor, as Circuit Justice for the Second Circuit, for temporary administrative relief pending disposition of the accompanying petition for a writ of mandamus. This application is narrow. It does not ask the Circuit Justice to resolve the merits of the underlying appeals, to supervise the Second Circuit's docket in the abstract, nor to award broad payment relief. It asks only that Respondents be required to maintain the operative stay-put status quo for six students by continuing the 1:1 travel-nursing and school-day nursing services necessary for those students to travel to, attend, and remain safely in school while the accompanying Rule 20 petition is pending. See 20 U.S.C. § 1415(j); *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199–200 (2d Cir. 2002); *Mendez v. Banks*, 65 F.4th 56, 64–65 (2d Cir. 2023).

The requested relief preserves, rather than alters, the status quo. Under the IDEA, stay-put functions as an automatic statutory injunction designed to preserve the child's then-current educational placement during the pendency of proceedings. *Honig v. Doe*, 484 U.S. 305, 323, 327–28 (1988); *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982). And where, as here, the pendency placement includes related services necessary to make the placement operable, the district may not suspend those services through nonpayment or delay. *Murphy*, 297 F.3d at 199–200; *Susquenita Sch. Dist. v. Raelee S. ex rel. Heidi S.*, 96 F.3d 78, 83–87 (3d Cir. 1996); *Mackey ex rel. Thomas M. v. Bd. of Educ. for Arlington Cent. Sch. Dist.*, 386 F.3d 158, 160–61 (2d Cir. 2004).

The present application concerns six students—E.B., H.C., R.L., S.C., L.S., and S.J.D.—for whom the record already establishes that 1:1 travel nursing and/or 1:1 school-day nursing are part of the students' operative educational programs and pendency placements. See, e.g., Patel Decl. ¶¶ 610, 640, 644–45, 682, 701, 703, 709, 732, 734, 759, Dkt. 13.2; ECF Nos. 1-1, 1-5, 1-6, 1-10, 1-18, 1-19. As Plaintiffs had explained below, these students do not merely benefit from nursing services; they require those services to reach school safely, remain there safely, and to receive educational benefit once there. See Patel Decl. ¶¶ 610, 640, 644–45, 682, 701, 703, 709, 732, 734, 759, Dkt. 13.2; see also *Cedar Rapids Cmty. Sch. Dist. v. Garret F. ex rel. Charlene F.*, 526 U.S. 66, 73–79 (1999); *Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883, 891–94 (1984). Without those services, the students' pendency placements collapse in practice.

This application is necessary because no timely District Court avenue remains. After Plaintiffs sought targeted emergency relief through Federal Rule of Civil Procedure 62.1, the District Court denied that request. See ECF No. 61. Plaintiffs then sought leave to pursue contempt-related relief and targeted discovery concerning DOE's ongoing noncompliance, but the District Court denied leave and stated that it "seriously doubts its jurisdiction" to proceed while the interlocutory appeals remain pending. ECF No. 65 at 4–5. In these circumstances, temporary administrative relief preserving the students' actual pendency status quo is the narrowest available means of preventing further disruption while the Rule 20 petition is under review.

The relief requested is therefore limited, modest and preservation-focused: an order requiring Respondents to continue the 1:1 travel-nursing and school-day nursing services necessary for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. to travel to, attend, and to remain safely in school pending disposition of the accompanying petition. That request follows directly from the governing rule that the child must remain in the then-current educational placement at public expense during the dispute and that a district may not accomplish through delay or unilateral nonpayment what it has never obtained through a stay. See *Murphy*, 297 F.3d at 199–200; *Ventura de Paulino v. N.Y.C. Dep't of Educ.*, 959 F.3d 519, 529 & n.50 (2d Cir. 2020); *Nken v. Holder*, 556 U.S. 418, 433–34 (2009).

2. Procedural Posture and Why the Application Is Before the Circuit Justice Now

This application arises from two pending Second Circuit matters stemming from the same District Court action, *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF). In No. 25-2127, Plaintiffs appealed the District Court's September 2, 2025 denial of preliminary injunctive relief seeking judicial recognition and enforcement of students' pendency placements under 20 U.S.C. § 1415(j); that appeal is now fully briefed. See *Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 24.1 (2d Cir. Dec. 9, 2025); id. Dkt. 31.1 (Mar. 10, 2026). In No. 26-523, Plaintiffs appealed the District Court's March 5, 2026 denial of emergency relief directed to six students whose medically necessary nursing services were at imminent risk of interruption. See *Bruckauf v. Aviles-Ramos*, No. 26-523, Dkt. 17.1, Addendum A, at 3–4 (2d Cir. Mar.

12, 2026); Notice of Appeal, ECF No. 53, *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF) (S.D.N.Y. Mar. 5, 2026).

The present application is before the Circuit Justice because the District Court has ceased to be a viable source of timely relief and the operative facts have materially worsened while appellate proceedings remain pending. On March 28, 2026, Plaintiffs filed an emergency Rule 62.1 motion in the district court explaining that, on March 27, counsel for the nursing provider had 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 beginning Monday, March 30, 2026; Plaintiffs further explained that each of those students required both 1:1 transportation nursing and 1:1 school-day nursing as part of the students' educational program and pendency placement, and that without those services the students could not travel to iBRAIN or attend school during the day. See ECF No. 60 at 1–2; McGuinness Decl. ¶¶ 3–7, ECF No. 60-1, *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF) (S.D.N.Y. Mar. 28, 2026). Plaintiffs promptly notified the Second Circuit of that Rule 62.1 filing in No. 26-523 and explained that the post-order developments bore directly on the pending emergency motion. See No. 26-523, Dkt. 42.1, at 1–2 (2d Cir. Mar. 29, 2026).

The following day, the District Court denied Rule 62.1 relief. See ECF No. 61, *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF) (S.D.N.Y. Mar. 29, 2026). On March 30, 2026, Plaintiffs then advised the Second Circuit that the feared interruption had become actual: 1:1 travel nursing and 1:1 school-day nursing had

ceased for Students E.B., H.C., R.L., S.C., L.S., and S.J.D., so the interruption was "actual and ongoing," not merely prospective. See No. 26-523, Dkt. 46.1, at 1–2 (2d Cir. Mar. 30, 2026). That filing also advised that the District Court had denied the Rule 62.1 motion and that the record already reflected awareness that payment-driven cessation of nursing services was a real risk. *Id.* at 1. Plaintiffs' point was not that the Court of Appeals had denied relief, but that circumstances had materially changed while the emergency motion remained pending. *Id.* at 1–2.

The posture continued to harden after March 30. In the renewed FRAP 27 motion filed in No. 25-2127, Plaintiffs explained that the District Court had by that point denied the original preliminary injunction, denied later emergency relief, denied Rule 62.1 relief, and denied even leave to pursue contempt-related motion practice or accelerated discovery, while stating that it "seriously doubts its jurisdiction" to proceed during the interlocutory appeals. See *Bruckauf v. Aviles-Ramos*, No. 25-2127, Plaintiffs-Appellants' Renewed Motion Under Federal Rule of Appellate Procedure 27 for Expedited Consideration 1–3, 13–15 (2d Cir. Apr. 7, 2026); ECF No. 65 at 4–5, *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF) (S.D.N.Y. Apr. 3, 2026). The renewed FRAP 27 motion accordingly summarized the District Court as "foreclosed as [a] viable forum for relief" and explained that, with school resuming on April 13, 2026, the Court of Appeals had become the only judicial forum capable of acting in time to prevent renewed school-access consequences. See No. 25-2127, FRAP 27 Mot. 13–17.

That procedural history matters for another reason. Plaintiffs' underlying request has remained materially consistent throughout: from the outset of the District Court case, Plaintiffs sought enforcement of established pendency rights and implementation of funding in the ordinary course, not "fast-track" or extraordinary payment acceleration. See Patel Decl. ¶¶ 1–4, 17–19, 38–45, 57–65, No. 26-523, Dkt. 13.2 (2d Cir. Mar. 12, 2026); ECF No. 1 ¶¶ 268–280, Relief Requested, *Bruckauf v. Aviles-Ramos*, No. 25-cv-05679 (KPF) (S.D.N.Y. July 9, 2025); ECF No. 8 at 19–21, id. (S.D.N.Y. July 15, 2025). Patel's declaration further records that Plaintiffs' July 15, 2025 motion sought judicial recognition of pendency and DOE's corresponding obligations, not immediate "fast-track" payment relief; that the District Court nevertheless denied preliminary injunctive relief under a traditional irreparable-harm framework; and that Plaintiffs immediately appealed that denial in No. 25-2127. See Patel Decl. ¶¶ 71–100, 132–151, 172–188, No. 26-523, Dkt. 13.2. The current application therefore does not present a new merits theory. It presents a narrower emergency request in a materially more urgent posture.

Finally, the Second Circuit's own docket history shows why Circuit-Justice intervention is sought now. In the earlier appeal, a single Circuit Judge denied Plaintiffs' September 2025 motion "to expedite the appeal and for injunctive relief." *Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 20.1 (2d Cir. Sept. 22, 2025); see also Patel Decl. ¶¶ 181–185, No. 26-523, Dkt. 13.2. Plaintiffs respectfully maintain that stay-put enforcement did not require waiting until the six students had

already lost access to school in practice. But whatever uncertainty may have existed at that earlier stage, none remained after Plaintiffs informed the Court in March 2026 that 1:1 travel nursing and school-day nursing had actually ceased and that the six students could no longer travel to or attend school without those medically required services. See No. 26-523, Dkts. 42.1, 46.1; ECF No. 60 at 1–2; McGuinness Decl. ¶¶ 3–7, ECF No. 60-1. At that point, continued nonaction no longer merely postponed relief; it permitted DOE's self-effectuated suspension of pendency services to continue in operation. That is why this application is now before the Circuit Justice rather than the District Court.

3. Stay-Put Enforcement Does Not Require Ordinary Irreparable-Harm Balancing

Applicants respectfully maintain that ordinary irreparable-harm balancing does not govern enforcement of established stay-put rights under 20 U.S.C. § 1415(j). The Supreme Court has long explained that Congress enacted the stay-put provision to strip school districts of unilateral authority to alter a child's educational placement during the pendency of IDEA proceedings. *Honig v. Doe*, 484 U.S. 305, 323 (1988). Consistent with that understanding, the Second Circuit has repeatedly held that pendency operates as an automatic injunction preserving the status quo and "substitutes an absolute rule in favor of the status quo for the court's discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of hardships." *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982).

Where parents seek enforcement of an already-established pendency placement, the ordinary Rule 65 inquiry therefore does not control.

That principle was not displaced by *Mendez v. Banks*, 65 F.4th 56 (2d Cir. 2023). As Plaintiffs explained in their Rule 62.1 motion, *Mendez* did not retreat from the settled rule that stay-put is automatic as to placement. Rather, it 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." *Id.* at 64; see also *Abrams v. Carranza*, No. 19-CV-4175 (AJN), 2019 WL 2385561, at *2–4 (S.D.N.Y. June 6, 2019) (explaining that, in the pendency context, "the preliminary injunction analysis is truncated" and the ordinary irreparable-harm and balancing inquiries do not govern). Read together, *Abrams* and *Mendez* establish continuity, not conflict; stay-put remains automatic, but where DOE's delay or nonpayment jeopardizes implementation of the placement, judicial relief remains available.

That is also how the issue has been framed throughout the record in this case. From the outset, Plaintiffs sought judicial recognition and enforcement of pendency in the ordinary course, not extraordinary "fast-track" payment relief. See Patel Decl. ¶¶ 63–69, 71–100, No. 26-523, Dkt. 13.2. Patel's declaration explains that the Complaint and July 15, 2025 motion sought recognition of the Students' pendency placements and DOE's corresponding obligations to fund those placements in accordance with the governing tuition, transportation, and nursing agreements, while expressly disavowing any request for extraordinary

acceleration. *Id.* ¶¶ 59–69, 71–100. The same declaration further reflects that the District Court nevertheless evaluated Plaintiffs' request under the traditional preliminary-injunction framework and denied relief because it did not view irreparable harm as established. *Id.* ¶¶ 144, 147–151, 172–180.

Applicants preserve the position that this was legal error. But even if some showing beyond the automatic force of § 1415(j) were thought necessary in this procedural posture, the governing cases still confirm that the relevant question is whether DOE's delay or nonpayment has jeopardized the child's educational placement—not whether parents can satisfy the full ordinary injunction framework applicable outside the stay-put context. *Mendez*, 65 F.4th at 64. That distinction matters here. This application does not ask the Circuit Justice to impose a free-floating equitable remedy untethered to the statute. It asks only that DOE be required to maintain the status quo that § 1415(j) itself preserves: the six students' existing pendency placements, including the nursing services necessary to make those placements operable.

The District Court's own words underscore the point. As reflected in Patel's declaration, the District Court repeatedly stated in August 2025 that Plaintiffs had not shown irreparable harm under the traditional four-factor test, including: "I don't see irreparable harm," Patel Decl. ¶ 144, and "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. The same framework governed the March 5, 2026 hearing on the six-student emergency

application, where the court stated that "a showing of probable irreparable harm is the single most important prerequisite" and later concluded 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. 127:7–18, 129:16–20, Ex. B to Dkt. 29.1, No. 26-523. Applicants respectfully maintain that § 1415(j) required no such showing. But even on the District Court's own chosen approach, the factual premise later changed: what had been treated as insufficiently imminent matured first into date-certain termination and then into actual cessation of medically required nursing services, with the result that the affected students could no longer travel to or attend school. ECF No. 60 at 2–7; McGuinness Decl. ¶¶ 3–7, ECF No. 60-1; see also Patel Decl. ¶¶ 610, 640, 644–45, 682, 701, 703, 709, 732, 734, 759, No. 26-523, Dkt. 13.2.

For present purposes, however, the key point is simpler. This Court need not endorse the District Court's irreparable-harm framework to grant the narrow temporary relief requested here. Under *Honig, Zvi D., Murphy,* and *Mendez*, once the students' pendency placements and the services necessary to make those placements function are established, DOE may not use delay or nonpayment to accomplish the practical suspension of those placements while proceedings continue. Because § 1415(j) itself supplies the operative rule in favor of preserving the educational status quo, Applicants' request for temporary administrative relief should be evaluated through that statutory lens, not through the ordinary discretionary balancing applicable in non-pendency injunction cases.

4. The District Court Repeatedly Required Irreparable Harm Anyway, and the New Facts Satisfied Even That Standard

Applicants preserve their position that ordinary irreparable-harm balancing does not govern enforcement of established stay-put rights. See *Honig v. Doe*, 484 U.S. 305, 323 (1988); *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982). But the District Court repeatedly took a different view and denied relief on the ground that Plaintiffs had not shown irreparable harm. The record is clear on that point. As summarized in Plaintiffs' Rule 62.1 motion, 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." ECF No. 60 at 2 (quoting 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.* (quoting Patel Decl. ¶ 147). And the court again reiterated that "there is no showing of irreparable harm here because you're conflating your irreparable harm into your success on the merits issues," before adding: "So I'm not going to grant the request for preliminary injunctive relief," and "I think that it is unwise for you to use preliminary injunction motions to try and get the relief that you seek." *Id.* at 2–3 (quoting Patel Decl. ¶¶ 148, 150–151, No. 26-523, Dkt. 13.2).

The same framework governed the District Court's March 5, 2026 ruling on the six-student emergency application. There, the court stated that "[c]ourts 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 then defined irreparable harm as 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; see also ECF No. 60 at 3.

The critical point for present purposes is that, even under the District Court's own chosen standard, the factual premise later changed. What the court had previously viewed as insufficiently imminent became date-certain and then actual. On March 28, 2026, Plaintiffs advised the District Court under Rule 62.1 that counsel for the nursing provider had informed Plaintiffs' counsel on March 27 that 1:1 nursing services for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. would be discontinued beginning Monday, March 30, 2026, and that without those services the six students could not travel to iBRAIN or attend school during the day. ECF No. 60 at 1–2; McGuinness Decl. ¶¶ 3–7, ECF No. 60-1. Plaintiffs therefore argued that "[t]hose 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." ECF No. 60 at 3.

Nor was that proposition an abstract one. The same filing explained, student by student, that the existing record already established nursing and transportation-linked nursing as indispensable components of the six students' pendency programs. See, e.g., Patel Decl. ¶ 610 (E.B. SRO decision directing DOE to "fully fund the student's special transportation and 1:1 nursing services"); id. ¶¶ 640, 644–45 (H.C. record establishing that a nurse was "critical" for both transportation and classroom access and that the student required "a full-time 1:1 nurse throughout the school day"); id. ¶ 682 (R.L. record recognizing "special transportation services, including 1:1 nursing services"); id. ¶¶ 701, 703, 709 (S.C. SRO and pendency orders directing funding of 1:1 nursing and transportation); id. ¶¶ 732, 734, 759 (L.S. record establishing necessity and appropriateness of 1:1 nursing); ECF No. 1-18 at 4; ECF No. 1-19 at 3 (S.J.D. record establishing full-time 1:1 nursing during the day and in transit). The point was straightforward: because nursing was necessary for safe transportation and school-day attendance, the loss of nursing meant loss of school access in practice. ECF No. 60 at 3–6.

That is why Plaintiffs' Rule 62.1 motion argued that, "[u]nder the Court's own formulation, irreparable harm requires an injury that is 'not remote or speculative but actual and imminent.' … That is what now exists. Losing nursing on Monday is actual and imminent." ECF No. 60 at 6–7 (quoting Mar. 5, 2026 Hr'g Tr. 127:13–16, Ex. B to Dkt. 29.1, No. 26-523). Plaintiffs further explained that because the record established that nursing was 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." *Id.* at 7 (citing *Mendez*, 65 F.4th at 64).

The subsequent appellate record only sharpened that point. After the Rule 62.1 motion was denied, Plaintiffs notified the Second Circuit that the feared interruption had matured from imminent to actual: 1:1 travel nursing and school-day nursing had ceased, and the six students could no longer travel to or attend school without those medically required services. See No. 26-523, Dkt. 46.1 at 1–2. Thus, even if one assumed for the sake of argument that the District Court was correct to demand a showing of irreparable harm, the later record satisfied that standard on the District Court's own terms. The harm was no longer speculative, no longer merely threatened, and no longer reducible to a delayed monetary payment. It was the present inability of six medically fragile students to access and remain in school because DOE's continued nonpayment had allowed necessary nursing services to cease. Under any formulation of "actual and imminent" harm, that threshold was met.

5. These Six Students' Established Pendency Placements Include the Nursing Services Necessary to Make Those Placements Operable

This application concerns six students—E.B., H.C., R.L., S.C., L.S., and S.J.D.—for whom the existing record already establishes that 1:1 travel nursing and 1:1 school-day nursing are not ancillary benefits, but required components of

the students' operative educational programs and pendency placements. As Plaintiffs explained in their March 28, 2026 Rule 62.1 motion, these 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." ECF No. 60 at 3. That proposition was not newly assembled for emergency purposes. It was grounded in the same complaint exhibits, administrative orders, and provider agreements that had been in the record from the outset. See Patel Decl. ¶¶ 2–4, 17–30, 31–37, 57–70, No. 26-523, Dkt. 13.2.

For E.B., the 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). E.B.'s Due Process Complaint further states that her "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. Thus, for E.B., the record already ties both transportation and school-day nursing directly to the maintenance of the educational placement itself.

H.C.'s record is equally explicit. A prior Findings of Fact and Decision 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). The same decision further described those nursing duties 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. For H.C., then, the record does not merely support a generalized need for nursing; it establishes that nursing is required both to reach school and to access the educational program once there.

For R.L., the transportation-linked nursing component appears in both the administrative and complaint record. 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." *Id.* ¶ 682 (quoting ECF No. 1-5 at 32). The Due Process Complaint further states that R.L. suffers from a brain injury producing severe impairments in cognition, language, memory, attention, reasoning, problem solving, physical functions, information processing, and speech; that she receives all 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. That record establishes that nursing is part of what makes R.L.'s placement functional both in transportation and during the school day.

S.C.'s pendency basis is similarly clear. SRO Decision No. 24-058 held that 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 for the 2025–2026 school year, 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. S.C.'s record therefore directly identifies nursing and transportation as part of the operative pendency program.

For L.S., the existing administrative record likewise establishes that 1:1 nursing is required. A 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." *Id.* ¶ 732 (quoting ECF No. 1-10 at 21). The same decision further 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). A later FOFD then explained that, due "to the complexities of [her] medical condition," L.S. 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). Again, the record establishes that the requested nursing services are part of the program the student requires to access school safely and receive educational benefit.

S.J.D.'s record is equally direct. Her Due Process Complaint states that, because of 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. A 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. That same decision then ordered: "I hold DOE shall pay $303,280 for the Student's nursing to nursing provider." *Id.* Thus, for S.J.D. as well, the need for day and transit nursing is embedded in the record and not meaningfully disputed.

Two broader points follow from these student-specific showings. First, as Plaintiffs noted below, DOE has at times suggested that E.B. and R.L. lack current-year nursing pendency orders. But the record already answers that contention: the SRO decisions establishing their pendency placements expressly direct DOE to fund nursing and transportation services, and those directives remain the operative pendency basis unless and until a superseding order is

entered. No such superseding order exists. See Patel Decl. ¶¶ 610, 682, No. 26-523, Dkt. 13.2; ECF Nos. 1-1, 1-5. Second, because these six students' pendency placements already include the nursing services necessary to make those placements function, the relief requested here does not seek a new entitlement or novel expansion of relief. It seeks only temporary preservation of already-established, medically necessary related services without which the students cannot travel to school, remain there safely, or receive educational benefit.

That is why the March 28, 2026 Rule 62.1 motion stated that these quotations "are not summaries or extrapolations. They are the record." ECF No. 60 at 5. And they show exactly what matters for this application: for all six students, nursing is indispensable to both transportation and attendance. Once those services ceased, the students' educational placements did not merely become financially strained or administratively delayed. They ceased to function in practice. That is the status quo that this application asks the Circuit Justice to preserve.

6. Nursing and Transportation Are Required Related Services; Without Them, School Access Collapses

Federal and state law make clear that both transportation and nursing may constitute required related services when necessary to enable a child with disabilities to access school and receive a free appropriate public education. The 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). The Supreme Court has repeatedly recognized that supportive services necessary to enable attendance at school fall within that mandate. In *Irving Independent School District v. Tatro*, the Court held that the IDEA covers supportive services necessary to enable a child to attend school. 468 U.S. 883, 891–94 (1984). And in *Cedar Rapids Community School District v. Garret F. ex rel. Charlene F.,* the Court held that a district must provide continuous nursing services necessary to keep a student in school because the IDEA's related-services mandate requires the supportive services needed for the child to access education. 526 U.S. 66, 73–79 (1999). Plaintiffs made exactly that point in the District Court: "The Supreme Court has expressly recognized that nursing services required to enable school attendance are mandatory 'related services' under the IDEA." Patel Decl. ¶ 871, No. 26-523, Dkt. 13.2 (quoting ECF No. 47-3 at 8–9).

New York law points the same way. State law requires districts to provide "suitable transportation" to and from a nonpublic school for a child with a disability who attends that school to receive special education or related services. N.Y. Educ. Law § 4402(4)(d). 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." 8 N.Y.C.R.R. § 200.1(ww). And the Second Circuit has recognized that "the IDEA defines 'free appropriate public education' to include 'special education and related services.'" *Doe v. East Lyme Board of Education*, 790 F.3d 440, 453 (2d Cir. 2015). Plaintiffs relied on these same authorities in ECF 60 to show that transportation and nursing are not

collateral conveniences; they are part of the educational program itself when the child cannot safely access school without them. ECF No. 60 at 5–6.

That is precisely the situation here. The six affected students do not merely require classroom seats. They require medically necessary nursing during transportation and during the school day to reach school safely, remain there safely, and to receive educational benefit once there. ECF No. 60 explained this directly: "Without transport nursing, these Students cannot get to school; without school-day nursing, they cannot remain there. The educational placement, therefore, collapses in practice." ECF No. 60 at 6. Patel's declaration and the underlying complaint exhibits supply the student-specific record support for that proposition. For H.C., for example, the record states that "a nurse was critical for both" classroom and transportation services. 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 during the day and while in transit to and from school." ECF No. 1-18 at 4. For E.B., the record states that her "complex medical needs necessitate the constant presence of a 1:1 nurse" and that she requires safe navigation support "both within school and during transportation." ECF No. 1-1 at 4; see also Patel Decl. ¶ 610, No. 26-523, Dkt. 13.2.

Patel's declaration also makes clear that this was not an afterthought. From the outset of the case, Plaintiffs' Due Process Complaints and attached exhibits identified tuition, transportation, and—where applicable—1:1 nursing as part of the operative pendency program. Patel explains that Exhibit B to the DPCs, the

Pendency Implementation Form, specified tuition at iBRAIN, special transportation, and, for students who require it, "[i]ndividual [n]ursing [s]ervices," with direct payment to the private nursing provider under the governing nursing agreement. Patel Decl. ¶¶ 24–30, No. 26-523, Dkt. 13.2. Patel further explains that these materials were attached to the DPCs when filed and provided DOE and the court with the information necessary to identify each student's then-current educational placement and DOE's financial obligations under the stay-put provision "from the outset of the administrative proceedings." *Id.* ¶ 30. In other words, the present application does not attempt to recast a billing dispute as an educational injury; the record has always treated these services as part of the educational placement itself.

The practical consequence of losing those services is therefore not merely administrative inconvenience or delayed reimbursement. It is the loss of school access. Plaintiffs stated this explicitly in their emergency District Court filings: "Here, the Students' pendency placements include 1:1 nursing services necessary for safe transportation to and from school and safe participation during the school day. Without 1:1 nursing, the Students cannot attend school." Patel Decl. ¶ 871, No. 26-523, Dkt. 13.2 (quoting ECF No. 47-3 at 8–9). Patel further recorded Plaintiffs' argument that once nursing is suspended, "the pendency placements will cease to function in practice." *Id.* ¶ 875 (quoting ECF No. 47-3 at 10). ECF 60 then carried that same point forward after the nursing provider gave notice of cessation, explaining that the six students would be unable to travel to or attend

school beginning March 30, 2026, because the services that made school access possible were ending. ECF No. 60 at 1–2, 5–6; McGuinness Decl. ¶¶ 3–7, ECF No. 60-1.

That is why the narrow relief requested here is properly understood as preservation of the actual pendency status quo, not acceleration of payment for its own sake. When the law requires transportation and nursing as related services because those services are indispensable to attendance and school-day participation, suspension of those services is not a peripheral contract issue. It is a functional elimination of the student's ability to access the educational placement that § 1415(j) protects. See *Cedar Rapids*, 526 U.S. at 73–79; Tatro, 468 U.S. at 891–94; *Doe v. East Lyme*, 790 F.3d at 453. Put simply: without the nursing and transportation services identified in the record, these six students cannot get to school, cannot remain there safely, and therefore cannot remain in their pendency placements in any meaningful sense.

7. DOE's Continued Nonpayment Functions as an Unlawful Self-Stay

DOE has never sought nor obtained a stay of its pendency obligations. Yet through prolonged nonpayment, it has accomplished the practical suspension of the very services that make these six students' pendency placements operable. That is the central point Plaintiffs presented below in their March 28, 2026 Rule 62.1 motion: DOE's nonpayment functions as an unlawful self-stay. ECF No. 60 at 6. That framing follows directly from the prospective-funding authorities. In *Susquenita School District v. Raelee S. ex rel. Heidi S.*, 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. 96 F.3d 78, 84–87 (3d Cir. 1996). The District Court in *Murphy v. Arlington Central School District Board of Education* likewise held that, once a prior administrative ruling established the private placement, the district was required to fund that placement prospectively during the pendency of the next dispute. 86 F. Supp. 2d 354, 365–67 (S.D.N.Y. 2000), aff'd, 297 F.3d 195 (2d Cir. 2002).

In *Murphy*, the Second Circuit affirmed in terms that are especially important here. Then-Judge Sotomayor explained 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. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982)). *Mackey* then cited *Susquenita* with approval and reaffirmed that Congress's 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. 2004). *Ventura de Paulino* expressly carries that same line forward: the Second Circuit stated that "Congress's 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," and footnote 50 expressly anchored that proposition in *Mackey* and, through *Mackey*, in *Susquenita*. *Ventura de Paulino v. N.Y.C. Dep't of Educ.*, 959 F.3d 519, 529 & n.50 (2d Cir. 2020). *Ventura de Paulino* thus reaffirms, rather than retreats from, the rule that where the operative placement is private, public financing is part of pendency.

Those principles fit this record exactly. Plaintiffs' position throughout has been that DOE may not preserve the form of pendency while starving its substance. Patel's declaration explains that the Complaint itself supplied "the complete factual and legal basis necessary to identify and enforce each Student's pendency placement," including the underlying DPC exhibits, pendency implementation forms, final administrative orders, and the governing tuition, transportation, and nursing agreements. Patel Decl. ¶¶ 2–4, 17–30, 57–70, No. 26-523, Dkt. 13.2. Patel further explains that Plaintiffs did not seek "fast-track" or extraordinary payment relief, but ordinary-course implementation without undue delay. *Id.* ¶¶ 63–69, 90–100. The point, from the beginning, was that once pendency attached, DOE had to maintain the placements in functioning form rather than wait out the school year through bureaucratic delay. *Id.* ¶¶ 203–225, 281–321, 336–381.

DOE's own articulated practices reinforce why the self-stay framing is apt. Patel records DOE's position in related proceedings that, where pendency is disputed, DOE "requires an order from the IHO fully determining the scope of its pendency obligations before it can begin funding a pendency program," and that in

iBRAIN cases DOE contests transportation "in every iBrain case," so "pendency disputes exist, and are adjudicated by the IHO to be implemented once pendency orders are issued." Patel Decl. ¶¶ 295, 302–304, No. 26-523, Dkt. 13.2. Plaintiffs' response, as Patel also records, was that this policy "conditions the automatic protections of § 1415(j) on the issuance of a separate administrative order" and effectively rewrites the statute. *Id.* ¶¶ 337–381. Whatever DOE calls this practice, its real-world effect is to suspend implementation unless and until DOE's preferred internal and administrative steps are completed. Where that delay results in cessation of services necessary for the child to access school, it is functionally indistinguishable from a stay.

That is why ECF 60 stated that "[t]hat principle is decisive here. DOE has neither sought nor 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." ECF No. 60 at 6. Later filings confirmed that this was no longer a projection. By March 30 and April 2, 2026, Plaintiffs had informed the Second Circuit that 1:1 travel nursing and 1:1 school-day nursing had ceased, that the six students could not safely travel to iBRAIN or remain there during the school day, and that the issue was "not a collateral billing issue" but "the functional denial of the placement itself." No. 26-523, Dkt. 46.1 at 1–2; Dkt. 52.1 at 2. At that point, DOE's nonpayment was no longer merely delaying performance of a financial

obligation. It was continuing, in operation, a self-effectuated suspension of the students' stay-put rights.

The requested relief therefore does not ask the Circuit Justice to impose a new obligation on DOE. It asks only that DOE be prevented from continuing to do through nonpayment what it has never been authorized to do through a stay. Because the record shows that these six students' pendency placements include the nursing services necessary to make those placements function, and because DOE has never obtained judicial authorization to suspend those services, temporary relief preserving those services simply restores the statutory status quo that § 1415(j), *Murphy, Mackey, Susquenita*, and *Ventura de Paulino* already require.

8. The District Court Is No Longer a Viable Source of Timely Relief, and Continued Nonaction Has Allowed the Self-Stay to Persist

This application is before the Circuit Justice because the District Court has ceased to be a viable source of timely relief. The record now reflects not merely a merits disagreement, but the closure of every meaningful procedural vehicle Plaintiffs used to obtain prompt enforcement of stay-put. Plaintiffs sought relief through the original preliminary-injunction motion, the October 2025 emergency motion, the February–March 2026 six-student emergency proceedings, the Rule 62.1 motion, and finally ECF No. 59's request for leave to pursue contempt-related relief and accelerated merits discovery. See ECF Nos. 8, 28, 47, 53, 59, 60, 61, 65, *Bruckauf v. Aviles-Ramos*, No. 1:25-cv-05679-KPF (S.D.N.Y. 2025–2026); Patel

Decl. ¶¶ 71–100, 203–225, 525–583, No. 26-523, Dkt. 13.2 (2d Cir. Mar. 12, 2026). The District Court denied the original preliminary-injunction request, denied later emergency relief, denied Rule 62.1 relief after the six-student nursing emergency was presented, and then denied even leave to brief contempt or obtain accelerated discovery. See ECF Nos. 20, 52, 61, 65.

ECF No. 65 is the critical endpoint. In ECF No. 59, Plaintiffs sought leave to move for contempt and to obtain accelerated merits discovery, explaining that the school year had begun "258 days ago," that there had been "no material change" since the February 12 status report, that "there have been no additional payments for any of the 17 students in this matter," and that DOE had "effectively and impermissibly granted itself a stay of its Pendency obligations." ECF No. 59 at 1–2. DOE opposed that request by arguing that Plaintiffs had "repeatedly, and unsuccessfully, sought expedited relief," had "failed to present any evidence that the students' placements are at risk," and that further payments would issue "in due course." ECF No. 64 at 1–3. On April 3, 2026, the District Court denied leave, held that Plaintiffs had not identified a violated order for contempt purposes, stated that Plaintiffs had "provided no evidence that students' placements are at risk," and further stated that it "seriously doubts its jurisdiction" to proceed while the interlocutory appeals remain pending. ECF No. 65 at 4–5. At that point, the District Court had not merely declined relief on a particular record; it had effectively withdrawn as a forum for timely enforcement.

Plaintiffs' renewed FRAP 27 motion in No. 25-2127 correctly synthesized that posture. There, Plaintiffs explained that the District Court had "closed every meaningful procedural vehicle through which Plaintiffs attempted to obtain timely enforcement of pendency," including the original preliminary-injunction motion, the October 2025 emergency motion, the Rule 62.1 motion, and ECF No. 59's request for contempt-related relief and accelerated discovery. Plaintiffs-Appellants' Renewed Motion Under Federal Rule of Appellate Procedure 27 for Expedited Consideration at 13–15, *Bruckauf v. Aviles-Ramos*, No. 25-2127 (2d Cir. Apr. 7, 2026). The FRAP 27 motion further explained that, read together, these events showed more than ordinary litigation friction: DOE continued withholding pendency funding while the school year ran, opposed each procedural vehicle Plaintiffs used to enforce stay-put, and then relied on later payments or later developments to argue that no true emergency existed, while the District Court repeatedly declined to engage the factual record and ultimately denied even leave to brief contempt or obtain discovery. *Id.* at 14–15. That is the posture in which this application reaches the Circuit Justice.

At the same time, continued inaction in the Court of Appeals has allowed DOE's self-effectuated suspension of pendency services to persist in operation. The Court of Appeals acted quickly on March 16, 2026, when a single judge referred the injunction-pending-appeal motion in No. 26-523 to a three-judge panel and denied interim relief. See *Bruckauf v. Aviles-Ramos*, No. 26-523, Dkt. 23.1 (2d Cir. Mar. 16, 2026). Applicants respectfully maintain that relief was warranted even then,

because stay-put enforcement does not require waiting until the protected placement has already collapsed in practice. See *Honig v. Doe*, 484 U.S. 305, 323 (1988); *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982); *Abrams v. Carranza*, No. 19-CV-4175 (AJN), 2019 WL 2385561, at *2–4 (S.D.N.Y. June 6, 2019). But whatever uncertainty may have existed at that earlier stage, none remained once Plaintiffs advised the panel that the threatened interruption had matured into actual and ongoing school-access loss and that the six students could no longer travel to or attend school without medically required nursing.

On March 29, 2026, Plaintiffs notified the Second Circuit that they had filed a Rule 62.1 motion based on post-order developments, including the nursing provider's notice that services would be discontinued beginning March 30. No. 26-523, Dkt. 42.1, at 1–2 (2d Cir. Mar. 29, 2026). On March 30, 2026, Plaintiffs then advised the Court that 1:1 travel nursing and school-day nursing had actually ceased for Students E.B., H.C., R.L., S.C., L.S., and S.J.D., and that the interruption was "actual and ongoing." No. 26-523, Dkt. 46.1, at 1–2 (2d Cir. Mar. 30, 2026). As Plaintiffs later summarized in the renewed FRAP 27 motion, those filings showed that the feared nursing interruption had become actual and that, by the time of ECF No. 65 below, the District Court had effectively withdrawn as a forum for timely enforcement. FRAP 27 Mot. at 14–15.

That sequence is what makes temporary relief from the Circuit Justice warranted now. The District Court is no longer available as a practical source of timely relief. The Court of Appeals has already shown that it can act quickly when

it chooses to do so. And once the panel was specifically advised that medically necessary nursing had ceased and that the six students could no longer travel to or attend school without those services, continued nonaction no longer merely postponed relief; it permitted DOE's self-effectuated suspension of pendency to continue in operation. In these circumstances, temporary administrative relief preserving the operative stay-put status quo pending disposition of the accompanying Rule 20 petition is not an attempt to bypass the ordinary process. It is the narrowest remaining means of preventing the students' statutory right to pendency from being defeated by the very delay that § 1415(j) was enacted to prevent. See *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 200 (2d Cir. 2002) ("access to immediate interim relief is essential for the vindication of this particular IDEA right").

9. Temporary Relief Preserving the Operative Status Quo Is Warranted Pending Disposition of the Rule 20 Petition

Temporary relief is warranted because the requested order would preserve, not alter, the operative stay-put status quo while the accompanying Rule 20 petition is under consideration. The narrow relief sought here is limited to continuation of the 1:1 travel-nursing and school-day nursing services necessary for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. to travel to, attend, and remain safely in school. That is the same targeted relief Plaintiffs sought in the District Court's Rule 62.1 motion: 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." ECF No. 60 at 7. Because those services are already part of the students' operative pendency placements, an order maintaining them pending review would preserve the status quo Congress chose to protect in 20 U.S.C. § 1415(j). See *Honig v. Doe*, 484 U.S. 305, 323 (1988); *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982); *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199–200 (2d Cir. 2002).

Immediate interim relief is also warranted because, absent such relief, continued delay has the practical effect of denying stay-put protection in operation. The Supreme Court has made clear that where an order—or, as here, continued non-relief—has the practical effect of withholding injunctive protection, immediate intervention is appropriate when the consequences are "serious, perhaps irreparable," and can be "effectually challenged" only through immediate review. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84, 89–90 (1981). Plaintiffs already presented that practical-denial framing to the Court of Appeals after the March 30 cessation filing, explaining that immediate appellate intervention is warranted where withholding injunctive relief carries "serious, perhaps irreparable, consequence[s]" that can be "effectually challenged only by immediate appeal." No. 26-523, Dkt. 46.1, at 2 (quoting *Carson*, 450 U.S. at 84). That framing fits this application precisely. Once the six students' nursing services ceased, later merits relief could not retroactively restore missed school attendance, missed related services, or the educational stability that stay-put is designed to protect. See

Murphy, 297 F.3d at 200 ("access to immediate interim relief is essential for the vindication of this particular IDEA right").

This is not a request for broad merits relief in the guise of an emergency application. It is the narrowest available means of preventing the Rule 20 petition from being overtaken by events. The District Court has denied the original preliminary-injunction request, denied later emergency relief, denied Rule 62.1 relief after the six-student emergency was presented, and then denied even leave to brief contempt or obtain accelerated discovery, while stating that it "seriously doubts its jurisdiction" to proceed during the interlocutory appeals. ECF No. 65 at 4–5. The renewed FRAP 27 motion correctly explains that, in this posture, the district court is "foreclosed as [a] viable forum for relief," and that the Court of Appeals has become the only judicial forum capable of acting in time. FRAP 27 Mot. 13–15. Without temporary relief preserving the operative status quo now, the accompanying Rule 20 petition risks becoming practically ineffectual before this Court can act on it.

The requested order is also administrable. It does not require a comprehensive reconstruction of DOE's payment systems or a merits determination on every pendency issue in the case. It is confined to six identified students, to two categories of services—1:1 travel nursing and 1:1 school-day nursing—and to the limited period during which the Rule 20 petition is pending. The record already identifies the legal basis for those services, the students for whom those services are required, and the consequence of their cessation. See, e.g., Patel Decl. ¶¶ 610,

640, 644–45, 682, 701, 703, 709, 732, 734, 759, No. 26-523, Dkt. 13.2; ECF Nos. 1-1, 1-5, 1-6, 1-10, 1-18, 1-19. And the March 28 Rule 62.1 filing already crystallized the practical point: without these services, the six students cannot travel to iBRAIN or attend school during the day. ECF No. 60 at 1–2, 5–7. Under these circumstances, temporary administrative relief preserving those services pending review is narrower and more appropriate than allowing the self-effectuated suspension of pendency to continue by default.

Finally, the timing confirms the need for immediate temporary relief. Plaintiffs' renewed FRAP 27 motion explains that spring recess does not eliminate the emergency; it marks the last practical window for meaningful judicial action before the same school-access consequences again take effect when classes resume. FRAP 27 Mot. 15–16. The motion further explains that waiting beyond that window would not merely postpone relief; it would "risk denying timely relief in practice." *Id.* at 16. That is exactly why a narrow order preserving the operative stay-put status quo is warranted now. It would prevent further disruption of established pendency placements while the accompanying Rule 20 petition is under review, and it would do so without prejudging the ultimate disposition of that petition or the underlying appeals. See *Carson*, 450 U.S. at 84, 89–90; *Murphy*, 297 F.3d at 200.

10. Conclusion

For the reasons set forth above, Applicants respectfully request that The Honorable Sonia Sotomayor, as Circuit Justice for the Second Circuit, grant

temporary administrative relief pending disposition of the accompanying petition for a writ of mandamus and order Respondents to maintain the operative stay-put status quo for Students E.B., H.C., R.L., S.C., L.S., and S.J.D. by continuing the 1:1 travel-nursing and school-day nursing services necessary for those students to travel to, attend, and remain safely in school. That relief is narrow, preservation-focused, and directed solely to preventing further disruption of established pendency placements while the accompanying Rule 20 petition is under review. See ECF No. 60 at 7; *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199–200 (2d Cir. 2002); *Ventura de Paulino v. N.Y.C. Dep't of Educ.*, 959 F.3d 519, 529 & n.50 (2d Cir. 2020); *Honig v. Doe*, 484 U.S. 305, 323 (1988).

Absent such temporary relief, DOE's self-effectuated suspension of nursing services will continue to operate while no effective District Court vehicle remains and while the accompanying Rule 20 petition is under review. The record shows that the District Court has denied the original preliminary-injunction motion, denied later emergency relief, denied Rule 62.1 relief after the six-student nursing emergency was presented, and finally denied even leave to pursue contempt-related motion practice or accelerated discovery while stating that it "seriously doubts its jurisdiction" to proceed during the interlocutory appeals. See ECF No. 65 at 4–5; Plaintiffs-Appellants' Renewed Motion Under Federal Rule of Appellate Procedure 27 for Expedited Consideration at 13–15, *Bruckauf v. Aviles-Ramos*, No. 25-2127 (2d Cir. Apr. 7, 2026). In these circumstances, temporary preservation of

the actual pendency status quo is the narrowest available means of preventing continued loss of school access before this Court can act.

In the alternative, if immediate temporary relief is not granted outright, Applicants respectfully request that Justice Sotomayor direct Respondents to file any response on an expedited schedule set by the Court so that the accompanying Rule 20 petition does not become practically ineffectual before review can occur.

Respectfully submitted,
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No. _____

In the
Supreme Court of the United States

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.,

Applicants,

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,

Respondents.

On Application for Temporary Administrative Relief to the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit Arising from the United States Court of Appeals for the Second Circuit

APPENDIX

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TABLE OF CONTENTS

A - 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

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

25-cv-05679 (KPF)

Plaintiffs

-against-

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

NOTICE OF APPEAL TO THE

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Pursuant to Fed. R. App. P. (3)(1) and 4(a), notice is hereby given that Plaintiffs appeals to the United States Court of Appeals for the Second Circuit.

The Plaintiff appeals from the Order of the Hon. Judge 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, NY

/s/ Jeffrey Arlen Spinner

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A - 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVER BRUCKAUF, *Individually and as Parent and Natural Guardian of E.B.*; JANERIS RODRIGUEZ MEJIA, *Individually and as Parent and Natural Guardian of E.R.*; MAYTINEE BIRD, *Individually and as Parent and Natural Guardian of H.C.*; DONNA CORNETT, *Individually and as Parent and Natural Guardian of J.B.*; KAMOLPORN LUMMAYOS, *Individually and as Parent and Natural Guardian of R.L.*; CLAUDIA RIVAS, *Individually and as Parent and Natural Guardian of S.C.*; SANDRA LEE, *Individually and as Parent and Natural Guardian of V.G.*; MADELINE GRULLON, *Individually and as Parent and Natural Guardian of C.B.*; MARIA HIDALGO, *Individually and as Parent and Natural Guardian of L.S.*; ADEJUMOKE OGUNLEYE, *Individually and as Parent and Natural Guardian of D.O.*; ROSA ELBA DE PAULINO, *Individually and as Parent and Natural Guardian of R.P.*; MARTINE THOMAS, *Individually and as Parents and Natural Guardians of A.T.1*; SCOTT THOMAS, *Individually and as Parents and Natural Guardians of A.T.1*; SHANTEL TALLEY, *Individually and as Parent and Natural Guardian of A.C.*; MARLENE VASQUEZ, *Individually and as Parent and Natural Guardian of L.C.*; LINDA LARACH-COHEN, *Individually and as Parent and Natural Guardian of M.C.*; MARILYN BECKFORD, *Individually and as Parent and Natural Guardian of M.B.*; PATRICK DONOHUE, *Individually and as Parent and Natural Guardian of S.J.D.*; and CRYSTAL CROSLEY, *Individually and as Parent and Natural Guardian of Z.C.*,

Plaintiffs,

25 Civ. 5679 (KPF)

ORDER

-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.

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

KATHERINE POLK FAILLA
United States District Judge

A - 5

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.

Melissa Aviles-Ramos, in her official capacity as Chancellor of the New York City Department of Education, New York City Department of Education,

Defendants - Appellees.

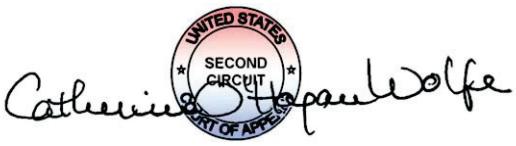
ORDER

Docket No. 26-523

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



LIBERTY & FREEDOM
LEGAL GROUP, LTD

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.).

I. 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.

A. 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].

B. 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.

C. 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). The 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.

II. 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.

III. 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)).

A. 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. Roc (attorney for DOE): 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.

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.

B. 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.

C. 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's 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.

D. 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).

E. 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,

By: _/s/ **Jeffrey Arlen Spinner**____
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LIBERTY & FREEDOM
LEGAL GROUP, LTD

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.[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 2023-24 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.

[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.

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.

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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.

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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,

Rory J. Bellantoni

Rory J. Bellantoni, Esq. (RB2901)

Cc: All counsel of record via ECF

LIBERTY & FREEDOM
LEGAL GROUP, LTD

MEMO ENDORSED

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.[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 2023-24 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.

[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.

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.

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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.

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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,

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.

Dated: March 29, 2026
New York, New York

SO ORDERED.

Katherine Polk Failla

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

LIBERTY & FREEDOM
LEGAL GROUP, LTD

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.

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-Appellants 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
Jeffrey Arlen Spinner, Esq.
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A - 32

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STEVEN BANKS
Corporation Counsel

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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 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

[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 al.*, 25-cv-05746-CM-SLC; and *Davis et al v. Aviles Ramos et al.,* 25-cv-7555- KPF

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 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.

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 Cmty. 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. That 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

[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).

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 F'3d 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 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 Cmty. 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.

Dated: April 3, 2026
New York, New York

SO ORDERED.

Katherine Polk Failla

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

LIBERTY & FREEDOM
LEGAL GROUP, LTD

April 2, 2026

VIA CM/ECF

Catherine O'Hagan Wolfe
Clerk of Court
United States 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. 49.1) 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. 29.1. 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