No. ______

IN THE

SUPREME COURT OF THE UNITED STATES

OLIVER BRUCKAUF, JANERIS RODRIGUEZ MEJIA, MAYTINEE BIRD, DONNA CORNETT, LEONARDA BAUTISTA, KAMOLPORN LUMMAYOS, CLAUDIA RIVAS, SANDRA LEE, CRYSAL CROSLEY, MADELINE GRULLON, MARIA HIDALGO, ADEJUMOKE OGUNLEYE, ROSA ELBA DE PAULINO, MARTINE THOMAS, SCOTT THOMAS, SHANTEL TALLEY, MARLENE VASQUEZ, LINDA LARACH-COHEN, MARILYN BECKFORD, and PATRICK DONOHUE, individually and/or as parent and natural guardian of students with disabilities whose pendency rights are at issue,
Plaintiffs,
v.
MELISSA AVILES-RAMOS, in her official capacity as Chancellor of the New York City Department of Education, and NEW YORK CITY DEPARTMENT OF EDUCATION,
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 i

RELATED PROCEEDINGS........ i

1. Nature of the Application and Relief Requested 1

2. Procedural Posture and Why the Application Is Before the Circuit Justice Now .. 3

3. *Murphy* Makes Immediacy Part of the Right 5

4. Each Student's Pendency Is Already Established by Prior Final Administrative Decisions 6

5. Stay-Put Enforcement Does Not Require Ordinary Irreparable-Harm Balancing 11

6. The District Court Repeatedly Applied an Irreparable-Harm / Placements-at-Risk Framework Anyway, and the Later Facts Satisfied Even That Standard 14

7. Pendency Funding Is Prospective; Funding and Related Services Are Part of the Protected Placement 18

8. DOE's Continued Nonpayment Functions as an Unlawful Self-Stay 21

8. DOE's Continued Nonpayment Functions as an Unlawful Self-Stay 24

9. The District Court Has Ceased to Function as a Timely Forum, and the Court of Appeals Is the Only Timely Federal Forum 28

10. Temporary Administrative Relief Preserving the Operative All-Students Status Quo Is Warranted Pending Disposition of the Rule 20 Petition........ 31

11. Conclusion........ 33

PARTIES TO THE PROCEEDING

Applicants (plaintiffs-appellants below) are Oliver Bruckauf; Janeris Rodriguez Mejia; Maytinee Bird; Donna Cornett; Leonarda Bautista; Kamolporn Lummayos; Claudia Rivas; Sandra Lee; Crysal Crosley; Madeline Grullon; Maria Hidalgo; Adejumoke Ogunleye; Rosa Elba de Paulino; Martine Thomas; Scott Thomas; Shantel Talley; Marlene Vasquez; Linda Larach-Cohen; Marilyn Beckford; and Patrick Donohue, each proceeding individually and/or as parent and natural guardian of a student with a disability whose pendency rights are at issue in the underlying district-court action and in Appeal No. 25-2127.

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.):

Bruckauf et al. v. Aviles-Ramos, No. 25-cv-05679 (KPF) (S.D.N.Y.)

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

Bruckauf et al. v. Aviles-Ramos, No. 25-2127 (appeal from Sept. 2, 2025 order denying preliminary injunctive relief).

Bruckauf et al. v. Aviles-Ramos, No. 26-523 (related narrower emergency appeal arising from the same district-court action).

TABLE OF AUTHORITIES

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Ventura de Paulino v. New York City Department of Education,
959 F.3d 519 (2d Cir. 2020) 13, 19, 22, 25

Bd. of Educ. v. Schutz,
290 F.3d 476–80 (2d Cir. 2002) 19

Hilton v. Braunskill,
481 U.S. 770 (1987) 26

Honig v. Doe,
484 U.S. 305 (1988) (2d Cir. 2004) 11, 14

Jacobson & Co. v. Armstrong Cork Co.,
548 F.2d 438 (2d Cir. 1977) 26

Jolly v. Coughlin,
76 F.3d 468 (2d Cir. 1996) 26

Mackey ex rel. Thomas M. v. Board of Education for the Arlington Central School District.,
386 F.3d 158–61 (2d Cir. 2004) 12, 19, 22, 25

Mendez v. Banks,
65 F.4th 56-65 (2d Cir. 2023) 13

Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.,
297 F.3d 195 (2d Cir. 2002) 2, 5, 12, 18, 22, 24, 25, 28, 33

Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.,
86 F. Supp. 2d 354–61 (S.D.N.Y. 2000) 19

Nken v. Holder,
556 U.S. 418 (2009) 26

Abrams v. Carranza,
2019 WL 2385561 (S.D.N.Y. June 6, 2019) 13

Tom Doherty Assocs., Inc. v. Saban Ent., Inc.,
60 F.3d 27–34 (2d Cir. 1995) 26

Ventura de Paulino v. New York City Department of Education,
959 F.3d 519 (2d Cir. 2020) 13, 19, 22, 25

Susquenita Sch. Dist. v. Raelee S,
96 F.3d 78-87 (3d Cir. 1996) 18

Zvi D. ex rel. Shirley D. v. Ambach,
694 F.2d 904 (2d Cir. 1982) 12, 14

Statutes

20 U.S.C. § 1415 ....1, 3, 5, 6, 11, 12, 13, 14, 18, 21, 23, 27

1. Nature of the Application and Relief Requested

This application does not ask the Circuit Justice to decide the merits of Appeal No. 25-2127 in the first instance, nor does it seek broad supervisory relief over the United States Court of Appeals for the Second Circuit in the abstract. Applicants instead seek temporary administrative relief preserving the operative stay-put status quo for all plaintiff-students pending disposition of the accompanying petition for a writ of mandamus. The requested relief is thus narrow, preservative, and directed only to maintaining the educational status quo that federal law already protects.

That status quo is neither speculative, newly requested, nor dependent on fresh merits determinations. It is already established by prior final administrative decisions reflected in the record, including the student-by-student pendency bases set out in Appellants' opening brief in No. 25-2127. See App. A-60, Dkt. 24.1 at 14–28. For each plaintiff-student, the record identifies the last unappealed administrative order establishing the student's pendency placement for the 2025-2026 school year, including iBRAIN and the funding and related services necessary to make that placement operable. See App. A-60, Dkt. 24.1 at 14–28.

Applicants therefore do not ask this Court to create a new interim regime; they ask only that the existing stay-put regime be maintained while the accompanying Rule 20 petition is under consideration. That request follows directly from the nature of the right Congress created in 20 U.S.C. § 1415(j). The stay-put provision functions as an automatic statutory injunction preserving the child's then-

current educational placement during proceedings. Where, as here, the operative placement is a private placement established through prior final administrative decisions, the status quo includes not merely a school seat in the abstract, but the public funding and related services necessary to maintain the placement in practice. Absent temporary relief, DOE's continued withholding of pendency implementation will continue to function as a self-effectuated stay of obligations it has never succeeded in staying through ordinary judicial process. See App. A-195, Dkt. 45.2 at 12–20; App. A-248, ECF No. 65 at 4–5.

Temporary administrative relief is especially warranted because then-Judge Sotomayor explained for the Second Circuit that "access to immediate interim relief is essential for the vindication of this particular IDEA right." *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.,* 297 F.3d 195, 200 (2d Cir. 2002). That principle governs this application. At this point, the broader appeal in No. 25-2127 is fully briefed, see App. A-60, Dkt. 24.1 at 1; App. A-116, Dkt. 31.1 at 1; App. A-157, Dkt. 39.1 at 1, yet the District Court has ceased to function as a timely forum, see App. A-248, ECF No. 65 at 4–5, and the delay already described in the accompanying Rule 20 petition has continued to defeat stay-put in practice. See App. A-195, Dkt. 45.2 at 14–20. Applicants thus seek only temporary administrative relief preserving the operative stay-put status quo for all plaintiff-students pending disposition of the accompanying Rule 20 petition, where that status quo is already established by prior final administrative decisions in the record and where Murphy

teaches that "access to immediate interim relief is essential for the vindication of this particular IDEA right."

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

This application arises from the same District Court action that gave rise both to Appeal No. 25-2127 and, later, to the narrower emergency appeal in No. 26-523. In the underlying action, *Bruckauf et al. v. Aviles-Ramos*, No. 25-cv-05679 (KPF) (S.D.N.Y.), Plaintiffs sought enforcement of the Individuals with Disabilities Education Act's stay-put provision, 20 U.S.C. § 1415(j), and related pendency obligations for all plaintiff-students in the case. See App. A-4, Dkt. 2.1 at 1; App. A-195, Dkt. 45.2 at 2–5. On September 2, 2025, the District Court denied preliminary injunctive relief, and Plaintiffs timely appealed. See App. A-4, Dkt. 2.1 at 1; App. A-1, Dkt. 1.1 at 12. That appeal, No. 25-2127, is now fully briefed. See App. A-60, Dkt. 24.1 at 1; App. A-116, Dkt. 31.1 at 1; App. A-157, Dkt. 39.1 at 1.

No. 25-2127 is the broader appeal. It concerns the action as a whole, the student-by-student pendency obligations established in the record, and the continuing question whether DOE may defeat stay-put through prolonged nonpayment and non-implementation while judicial review remains pending. See App. A-60, Dkt. 24.1 at 14–28; App. A-195, Dkt. 45.2 at 13–20. No. 26-523, by contrast, arose later out of the same underlying action as a narrower six-student emergency after the consequences of prolonged delay became concrete in the form of an actual nursing-related interruption of school access. See App. A-195, Dkt. 45.2 at

5–10; App. A-230, ECF No. 60 at 1–2. The present application therefore does not advance a new legal theory. It seeks relief in the broader, antecedent appeal that should have prevented the narrower downstream emergency from arising in the first place.

While No. 25-2127 remained pending, Plaintiffs repeatedly returned to the district court seeking timely enforcement of pendency. The District Court later denied Rule 62.1 relief, see App. A-238, ECF No. 61, denied contempt-related and accelerated-discovery relief, see App. A-248, ECF No. 65 at 4–5, and in doing so stated that it "seriously doubts its jurisdiction" while the interlocutory appeals remain pending. See App. A-248, ECF No. 65 at 5. The district court's course of rulings thus left no viable timely forum below. As the accompanying Rule 20 petition explains, the District Court is no longer a practical source of timely relief, and the Court of Appeals is now the only federal court positioned to act in time on the broader, fully briefed appeal. See App. A-195, Dkt. 45.2 at 14–20; App. A-248, ECF No. 65 at 4–5.

That is why this application is now before the Circuit Justice. No. 25-2127 is fully briefed and broader than No. 26-523. No. 26-523 demonstrates the downstream consequences of continued delay. But No. 25-2127 remains the antecedent appeal—the broader vehicle involving all plaintiff-students and the underlying stay-put and unlawful-self-stay issues—that should have prevented those consequences and that now warrants temporary administrative relief pending disposition of the accompanying Rule 20 petition.

3. *Murphy* Makes Immediacy Part of the Right

The Second Circuit's decision in *Murphy v. Arlington Central School District Board of Education*, 297 F.3d 195 (2d Cir. 2002), should anchor the analysis of this application because it identifies a feature of the stay-put right that is not merely remedial, but substantive: timing. Then-Judge Sotomayor wrote that "access to immediate interim relief is essential for the vindication of this particular IDEA right." Id. at 200. That statement is not incidental. It explains why stay-put occupies a distinct place within IDEA jurisprudence and why ordinary delay can defeat the right in practice even before a court reaches the merits of the broader dispute.

Murphy is therefore not merely an exhaustion case in the abstract. Its reasoning rests on the recognition that delayed vindication is not true vindication in the stay-put context. The court explained that a belated administrative ruling upholding a student's stay-put rights does not remedy the disruption already suffered when the student's educational status quo has not been maintained during the dispute. Id. at 199–200. See App. A-195, Dkt. 45.2 at 17–18. That principle is central here. If the right protected by 20 U.S.C. § 1415(j) depends on maintaining the child's then-current educational placement during proceedings, a system of relief that arrives only after the placement has been destabilized does not preserve the right Congress created; it merely acknowledges its past violation.

That is precisely why this application is necessary now. By April 2026, parents who filed suit in July 2025 and appealed in September 2025 still await

action in a broader appeal that is fully briefed. See App. A-1, Dkt. 1.1 at 12; App. A-60, Dkt. 24.1 at 1; App. A-116, Dkt. 31.1 at 1; App. A-157, Dkt. 39.1 at 1. In the meantime, the District Court has ceased to function as a timely forum, see App. A-248, ECF No. 65 at 4–5, and the downstream consequences of delay have already become concrete. See App. A-195, Dkt. 45.2 at 5–10, 14–20; App. A-230, ECF No. 60 at 1–2. Under *Murphy's* own logic, that is not a mere scheduling problem. It is the denial in practice of the very immediacy the right requires.

Murphy did not recognize merely a right to eventual relief; it recognized that, for this IDEA right, immediacy is part of the right itself, and that is why temporary administrative relief is necessary now. Applicants do not seek such relief because the accompanying Rule 20 petition presents an abstract legal question worthy of attention. They seek it because, absent temporary preservation of the operative stay-put status quo while that petition is pending, the "immediate interim relief" *Murphy* deemed essential will continue to be denied, and the right Congress secured through § 1415(j) will continue to be eroded by delay rather than openly adjudicated on the merits.

4. Each Student's Pendency Is Already Established by Prior Final Administrative Decisions

The operative stay-put status quo in this case is not abstract or disputed at the level of legal source. Dkt. 24.1 sets out, student by student, the last unappealed administrative order establishing pendency for the 2025-2026 school year and thus provides the record roadmap for this application. See App. A-60, Dkt. 24.1 at 14–28.

The relief sought here is therefore preservation of already-established pendency, not creation of new rights. As Dkt. 24.1 repeatedly explains, the identified unappealed administrative order for each student "establishes" that student's pendency for the 2025-2026 school year. See App. A-60, Dkt. 24.1 at 14–26.

E.B. — Dkt. 24.1 at 14–15 (SRO Decision No. 23-238, issued Dec. 1, 2023; DOE failed to offer a FAPE; iBRAIN was an appropriate unilateral placement; DOE was directed to fully fund special transportation and 1:1 nursing services for the 2023-2024 school year; establishes E.B.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 14–15.

E.R. — Dkt. 24.1 at 15–16 (FOFD in IHO Case No. 251092, issued Nov. 18, 2023; DOE failed to offer a FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to fully fund tuition and transportation for the 2023-2024 school year; establishes E.R.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 15–16.

H.C. — Dkt. 24.1 at 16 (FOFD in IHO Case No. 228745, issued Sept. 20, 2022; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition, transportation, and nursing services; establishes H.C.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 16.

J.B. — Dkt. 24.1 at 17 (SRO Decision No. 23-235, issued Jan. 10, 2024; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; the SRO modified the FOFD to reflect the categories of tuition owed pursuant to the parents' contract

with iBRAIN; establishes J.B.'s pendency at iBRAIN, together with attendant related services pursuant to the parents' contracts, for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 17.

R.L. — Dkt. 24.1 at 17–18 (SRO Decision No. 23-271, issued Jan. 4, 2024; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition and transportation pursuant to the terms of the contracts; establishes R.L.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 17–18.

S.C. — Dkt. 24.1 at 18 (SRO Decision No. 24-058, issued Apr. 18, 2024; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition, transportation, and nursing services pursuant to the terms of the contracts; establishes S.C.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 18.

V.G. — Dkt. 24.1 at 19 (SRO Decision No. 22-165, issued Mar. 1, 2023; affirmed the IHO FOFD; DOE denied FAPE; DOE was ordered to directly pay the costs of attendance at iBRAIN and specialized transportation; establishes V.G.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 19.

Z.C. — Dkt. 24.1 at 19–20 (FOFD in IHO Case No. 277285, issued June 27, 2025, and based on the prior unappealed FOFD in IHO Case No. 250764; DOE was ordered to pay tuition and transportation costs for the unilateral placement at iBRAIN; establishes Z.C.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 19–20.

C.B. — Dkt. 24.1 at 20 (FOFD in IHO Case No. 277158, issued Sept. 9, 2024; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition and contracted transportation services for the 2024-2025 school year; establishes C.B.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 20.

L.S. — Dkt. 24.1 at 21 (FOFD in IHO Case No. 251061, issued Sept. 15, 2023; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition, transportation, and nursing services pursuant to the provider contracts; establishes L.S.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 21.

D.O. — Dkt. 24.1 at 21–22 (FOFD in IHO Case No. 251168, issued Dec. 5, 2022; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition and transportation pursuant to the provider contracts; establishes D.O.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 21–22.

R.P. — Dkt. 24.1 at 22 (FOFD in IHO Case No. 228467, issued Mar. 13, 2023; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition and transportation services; establishes R.P.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 22.

A.T. — Dkt. 24.1 at 22–23 (SRO Decision No. 24-624, issued Apr. 9, 2025; DOE denied FAPE; iBRAIN was the appropriate unilateral placement; DOE was

ordered to directly pay tuition and specialized transportation; establishes A.T.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 22–23.

A.C. — Dkt. 24.1 at 23–24 (FOFD in IHO Case No. 277096, issued Aug. 28, 2024; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition, transportation, and nursing services pursuant to the provider contracts; establishes A.C.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 23–24.

L.C. — Dkt. 24.1 at 24 (FOFD in IHO Case No. 277155, issued Oct. 9, 2024; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition and transportation services for the 2024-2025 school year; establishes L.C.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 24.

M.C. — Dkt. 24.1 at 24–25 (SRO Decision No. 23-262, issued Jan. 12, 2024; DOE denied FAPE; iBRAIN was the appropriate unilateral placement; DOE was ordered to directly pay tuition and specialized transportation; establishes M.C.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 24–25.

M.B. — Dkt. 24.1 at 25–26 (FOFD in IHO Case No. 277132, issued Oct. 14, 2024; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition, transportation, and nursing services pursuant to the provider contracts; establishes M.B.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 25–26.

S.J.D. — Dkt. 24.1 at 26 (FOFD in IHO Case No. 277140, issued Dec. 13, 2024; DOE denied FAPE; iBRAIN was an appropriate unilateral placement; DOE was ordered to directly pay tuition, transportation, and nursing services for the 2024-2025 school year; establishes S.J.D.'s pendency for the 2025-2026 school year). See App. A-60, Dkt. 24.1 at 26.

As Dkt. 24.1 further explains, each student was re-enrolled at iBRAIN for the 2025-2026 school year as the last agreed-upon educational placement, and the filing of each Parent's due process complaint triggered DOE's obligation to fund each student's pendency placement from that date forward. See App. A-60, Dkt. 24.1 at 26–28. This application therefore seeks only preservation of pendency already established as a matter of law; it does not seek the creation of any new interim rights or any fresh merits determination by the Circuit Justice.

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

The relief sought here rests on a settled principle of IDEA law: enforcement of stay-put does not depend on the ordinary discretionary balancing associated with Rule 65 preliminary-injunction practice. Congress enacted 20 U.S.C. § 1415(j) to prevent school authorities from unilaterally altering a disabled child's educational placement during the pendency of proceedings. In *Honig v. Doe*, this Court explained that Congress "very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students" during such disputes. 484 U.S. 305, 323 (1988). That statutory judgment is the starting point

here. Stay-put is not a matter of equitable grace; it is the preservation of a congressionally mandated status quo.

The Second Circuit made that point explicit in *Zvi D. ex rel. Shirley D. v. Ambach,* holding that § 1415(j) functions as an "automatic" injunction 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." 694 F.2d 904, 906 (2d Cir. 1982). Under that rule, once the student's pendency placement is identified, the usual equitable inquiry drops out. The court does not decide whether a plaintiff has made a sufficient showing of irreparable harm to deserve preservation of the status quo; the statute itself supplies that protection.

That principle extends to the funding and related services necessary to maintain the placement in practice. In *Murphy v. Arlington Central School District Board of Education*, the Second Circuit held that when the child's pendency placement is in private school, the district's obligation to fund that placement continues during the dispute because otherwise the right would be meaningless. 297 F.3d 195, 199–200 (2d Cir. 2002). In *Mackey ex rel. Thomas M. v. Board of Education for the Arlington Central School District,* the Second Circuit likewise recognized that Congress chose to preserve the child's current placement at public expense while proceedings continue. 386 F.3d 158, 160–61 (2d Cir. 2004). And in *Ventura de Paulino v. New York City Department of Education*, the Second Circuit reaffirmed that where the operative placement is private, pendency carries with it

the financial responsibility necessary to maintain that placement. 959 F.3d 519, 529 & n.50 (2d Cir. 2020). See App. A-60, Dkt. 24.1 at 33–36; App. A-195, Dkt. 45.2 at 12–14.

Nor do *Abrams* and *Mendez* unsettle that framework. In Abrams v. Carranza, then-District Judge Nathan explained that, in the pendency context, "the preliminary injunction analysis is truncated," because § 1415(j) operates as an "automatic preliminary injunction" displacing the ordinary irreparable-harm and balancing inquiry. No. 19-CV-4175 (AJN), 2019 WL 2385561, at *2–4 (S.D.N.Y. June 6, 2019). See App. A-230, ECF No. 60 at 2–3. Four years later, in *Mendez v. Banks,* Circuit Judge Nathan writing for the Second Circuit panel did not retreat from that principle. It held only that § 1415(j) does not require automatic "fast-track" funding in every circumstance, while expressly preserving relief where a delay or failure to pay has jeopardized the child's educational placement. 65 F.4th 56, 63–65 (2d Cir. 2023). See App. A-230, ECF No. 60 at 2–3. Read together, *Abrams* and *Mendez* establish continuity, not conflict: stay-put remains automatic, and judicial relief remains available when DOE's delay or nonpayment threatens the operative placement.

That doctrinal structure is critical here. This case is not limited to six students' nursing services, and this Rule 22 application does not rest on any narrow theory peculiar to the later emergency in No. 26-523. It concerns preservation of already-established pendency across the entire action. As set out above, the record identifies the legal basis for each plaintiff-student's pendency placement, and those

placements include the funding and related services necessary to make them real in practice. See App. A-60, Dkt. 24.1 at 14–28. Once those placements were fixed by prior final administrative decisions, DOE could not lawfully suspend them through prolonged nonpayment while insisting that Plaintiffs separately prove irreparable harm in the ordinary preliminary-injunction sense.

Accordingly, the proper framework for this application is the automatic-injunction framework recognized in Honig, Zvi D., Murphy, Mackey, and *Ventura de Paulino*, and carried forward by *Abrams* and *Mendez*. The question is not whether Applicants have made the sort of discretionary showing ordinarily required to obtain provisional equitable relief. The question is whether the status quo already fixed by § 1415(j) and the prior final administrative decisions reflected in the record should be preserved while the accompanying Rule 20 petition is pending. Under the governing law, it should.

6. The District Court Repeatedly Applied an Irreparable-Harm / Placements-at-Risk Framework Anyway, and the Later 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 Plaintiffs later summarized in their Rule 62.1 filing, 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." See App. A-230, ECF No. 60 at 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." See App. A-230, ECF No. 60 at 2. 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 concluding that it would not grant preliminary injunctive relief. See App. A-230, ECF No. 60 at 2–3.

The same framework governed the district court's March 5, 2026 ruling on the later six-student emergency application. There, the court stated that "a showing of probable irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction or a temporary restraining order." See App. A-230, ECF No. 60 at 3. The court then defined irreparable harm as injury "that is not remote or speculative but actual and imminent, for which a monetary award cannot be adequate compensation." See App. A-230, ECF No. 60 at 3. After considering the six students, the court 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." See App. A-230, ECF No. 60 at 3, 6–7.

That same mis-framing persisted to the end. In ECF No. 59, Plaintiffs argued that DOE remained liable for pendency funding unless and until it obtained a stay and cited authorities explaining that a district may not suspend stay-put through self-help. See App. A-226, ECF No. 59 at 1–3. Yet in ECF No. 65, the District Court again reverted to whether Plaintiffs had shown students' placements were "at risk," stating that Plaintiffs had "provided no evidence that students' placements are at risk," while also stating that it "seriously doubts its jurisdiction" to proceed during the interlocutory appeals. See App. A-248, ECF No. 65 at 4–5. The case thus proceeded for months under a District Court framework Plaintiffs consistently argued was legally inapplicable to established stay-put rights.

The critical point for present purposes, however, is that even under the District Court's own chosen framework, the factual premise later changed. What the court had previously treated as insufficiently imminent matured first into date-certain termination and then into actual cessation of medically required nursing services. 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. See App. A-230, ECF No. 60 at 1–2; App. A-244, Ex. 5. Plaintiffs therefore explained 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." See App. A-230, ECF No. 60 at 3.

Nor was that showing abstract. As ECF No. 60 explained, the existing record already established that nursing and transportation-linked nursing were indispensable components of the affected students' pendency programs. See App. A-230, ECF No. 60 at 3–6. Once those services ceased, the consequence was not merely delayed payment. It was loss of school access in practice. Plaintiffs then advised the Second Circuit that the feared interruption had become "actual and ongoing." See App. A-244, Ex. 5. Thus, even assuming 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 later monetary remedy. It was the present inability of medically fragile students to travel to and attend school because DOE's continued nonpayment had allowed required nursing services to cease.

That matters here not because No. 25-2127 has somehow become a six-student case. It has not. No. 26-523 instead demonstrates, in concrete form, what the broader delay in No. 25-2127 was already doing in practice. The six-student collapse was downstream proof of a wider all-students pendency-enforcement failure. It showed that prolonged nonaction in the broader, fully briefed appeal was not merely postponing relief; it was allowing DOE's self-effectuated suspension of stay-put to mature into actual loss of school access. Under either the correct

statutory framework or the District Court's own chosen one, that development warranted timely judicial intervention.

7. Pendency Funding Is Prospective; Funding and Related Services Are Part of the Protected Placement

The stay-put right protected by 20 U.S.C. § 1415(j) is not a right to eventual reimbursement after litigation ends. It is a right to maintenance of the child's operative educational placement during the litigation itself. That is why pendency funding is prospective. Once a student's pendency placement has been established by a prior final administrative decision or other agreement recognized by law, the district's financial responsibility is not something that may be deferred until later administrative or judicial cleanup. It is part of what preserves the status quo while the dispute remains pending.

That principle is reflected in the case law. In *Susquenita Sch. Dist. v. Raelee S.*, the Third Circuit rejected the contention that a district could postpone financial responsibility until the end of the case and held instead that the district's "financial responsibility should begin" once there is an administrative or judicial decision vindicating the parents' position. 96 F.3d 78, 86–87 (3d Cir. 1996). Otherwise, the supposed right to remain in the placement becomes illusory for families unable to front the costs. Id. In the Second Circuit, *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.* explained that "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," because "[t]o cut off public funds would amount to a unilateral change in placement." 297 F.3d 195, 199–200 (2d Cir. 2002). *Mackey ex rel. Thomas M. v. Bd. of Educ. for Arlington Cent. Sch. Dist.* likewise recognized that Congress's policy choice is that the child remain in the current placement at public expense during the dispute, and cited *Susquenita* approvingly in doing so. 386 F.3d 158, 160–61, 165–66 (2d Cir. 2004). The same principle appears in *Ventura de Paulino v. N.Y.C. Dep't of Educ.*, which reiterates that stay-put requires the district to continue funding the last agreed-upon educational program during the pendency of proceedings. 959 F.3d 519, 529 n.50 (2d Cir. 2020). See also *Bd. of Educ. v. Schutz,* 290 F.3d 476, 477, 479–80 (2d Cir. 2002) (describing order directing prospective tuition payment during pendency); *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 86 F. Supp. 2d 354, 355, 357–61 (S.D.N.Y. 2000) (holding district financially responsible for tuition until placement is changed in accordance with IDEA).

That framework matters here because this is not a mere reimbursement-delay dispute. The operative pendency placements in this case are private placements, established student by student through prior final administrative decisions set out in Appellants' opening brief. App. A-73–A-87. In that setting, funding is not collateral to placement. It is part of what makes the placement real. DOE cannot preserve the label of iBRAIN while postponing for months the tuition, transportation, nursing, and other required service funding that allows the student actually to attend and remain there. To do so is not to preserve the status quo

while contesting costs; it is to let the placement collapse in practice while nominally acknowledging it in theory.

That point applies across the relevant categories of service. Tuition is prospective because without current payment the private placement cannot be maintained as the student's educational program during the litigation. Transportation is prospective because, for students whose pendency program includes specialized transportation, the school is not meaningfully available without the means of reaching it. Nursing is prospective because, for students whose pendency program includes 1:1 school nursing or transportation-linked nursing, those services are conditions of safe attendance, not ancillary afterthoughts. And the same is true of other related services incorporated into the operative placement through the governing administrative decisions and contracts. Once those elements form part of the established pendency program, DOE may not carve them away one by one and still claim that stay-put has been honored. See App. A-73–A-87, A-109–A-110.

The later six-student nursing collapse simply illustrated that principle in especially concrete form. When required nursing services ceased, the consequence was not merely delayed vendor payment. It was a complete loss of school access in practice. As Plaintiffs explained in seeking Rule 62.1 relief, without those services the affected students could not travel to iBRAIN or attend school during the day. App. A-230–A-237. The later appellate filings confirmed that the interruption had become "actual and ongoing." App. A-202–A-204, A-244–A-247. But that example

should not be misunderstood as narrowing the theory. The point is broader: DOE cannot preserve the label of placement while starving the means of attending and remaining there. Pendency funding is prospective because the right protected by § 1415(j) is prospective. It secures the child's educational status quo during the dispute, not after it.

For that reason, DOE's anticipated response—that it may defer implementation while contesting costs, scope, or administrative processing issues—fails as a matter of stay-put doctrine. Once the operative pendency placement is fixed, DOE must implement it. The right at issue is not to eventual reimbursement after victory. It is prospective maintenance of the educational placement at public expense while the case is pending. And once that principle is recognized, DOE's prolonged nonpayment is revealed for what it is: not neutral administrative delay, but the functional suspension of pendency itself. See App. A-109–A-110.8

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

DOE's prolonged nonpayment and delayed implementation have functioned, in practice, as a self-effectuated suspension of stay-put. That is the core problem that this application seeks to prevent from continuing while the accompanying Rule 20 petition is pending. Once the operative pendency placements were fixed by prior final administrative decisions, DOE was not free to treat those obligations as optional, to be implemented only if and when its internal processes or litigation preferences permitted. As Plaintiffs have repeatedly explained, DOE may not accomplish through delay and unilateral nonpayment what it has never obtained

through a stay. See App. A-195, Dkt. 45.2 at 12–20; App. A-226, ECF No. 59 at 1–3; App. A-230, ECF No. 60 at 2–3.

That conclusion follows directly from the governing stay-put cases. *Murphy* explains that cutting off the public funding necessary to maintain an established private placement "would amount to a unilateral change in placement." 297 F.3d at 199–200. *Mackey* reiterates that Congress's policy choice is that the child remain in the current placement at public expense while the dispute proceeds. 386 F.3d at 160–61, 165–66. And *Ventura de Paulino* confirms that, where the operative placement is private, the financial responsibility necessary to maintain that placement travels with pendency itself. 959 F.3d at 529 & n.50. The logic of those decisions is incompatible with DOE's conduct here. A district cannot formally acknowledge that a pendency placement exists while withholding for months the funding and service implementation necessary to keep that placement alive in practice. To do so is not mere delay in payment administration. It is the functional suspension of pendency. See App. A-60, Dkt. 24.1 at 33–36; App. A-195, Dkt. 45.2 at 12–16.

The record shows that Plaintiffs squarely presented that self-stay theory below. In their March 24, 2026 pre-motion letter, Plaintiffs explained that DOE had "effectively and impermissibly granted itself a stay of its Pendency obligations," even though it had never obtained judicial relief authorizing such a result. See App. A-226, ECF No. 59 at 1–2. Plaintiffs further argued that DOE remained liable for the pendency funding it should already have provided unless and until it obtained a

stay. See id. at 2–3. The District Court did not grant DOE a stay. Nor did DOE carry the burden required to obtain one. Instead, DOE simply continued to litigate while withholding implementation, and the District Court ultimately responded not by rejecting the self-stay concern on the merits, but by saying that Plaintiffs had shown no evidence that students' placements were "at risk" and that the court "seriously doubts its jurisdiction" during the interlocutory appeals. See App. A-248, ECF No. 65 at 4–5.

That sequence matters because it shows that the self-stay theory is not rhetorical. It describes what actually happened. DOE did not obtain an order staying its pendency obligations. It did not obtain a narrowing of the operative placements fixed by prior final administrative decisions. It simply treated prolonged nonpayment as though it had the practical effect of a stay and relied on the passage of time to do the work that an actual stay application would have required it to justify. But a stay is not self-executing, and a litigant may not unilaterally suspend compliance with an operative legal obligation merely because further review is ongoing. Here, the effect of DOE's position is to invert § 1415(j): instead of preserving the child's educational program while the case proceeds, DOE's nonpayment forces families and providers to absorb the pressure of continued litigation until the statutory protection becomes hollow in practice.

The later six-student nursing collapse illustrated that dynamic in especially vivid form, but the theory is broader than that episode. The point is not merely that nursing services for six students eventually ceased. The point is that DOE's

prolonged nonpayment across the action operated as a mechanism for degrading already-established pendency over time. See App. A-221, Ex. 1; App. A-195, Dkt. 45.2 at 14–20. No. 26-523 thus showed the downstream consequence of a larger problem already embedded in No. 25-2127: DOE's ability, absent timely judicial intervention, to transform an automatic statutory injunction into a nominal entitlement honored only on paper.

That is why this Court's intervention is needed now. If DOE may continue to withhold implementation unless and until a court affirmatively compels payment on an emergency basis, then stay-put ceases to function as an automatic protection and becomes a right contingent on a family's ability to survive delay. That is precisely what *Murphy* rejected when it held that "access to immediate interim relief is essential for the vindication of this particular IDEA right." 297 F.3d at 200. And it is why the accompanying Rule 20 petition properly frames this case as one in which DOE has been attempting to accomplish through prolonged nonpayment what it has never obtained through a stay. See App. A-195, Dkt. 45.2 at 12–20.

Accordingly, DOE's continued nonpayment should be understood for what it truly is: not neutral administrative lag, but an unlawful self-effectuated stay of already-operative pendency obligations. Temporary administrative relief is warranted to prevent that self-stay from continuing while the accompanying Rule 20 petition is under consideration.

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

DOE's prolonged nonpayment and delayed implementation have functioned, in practice, as a unilateral and self-effectuated suspension of stay-put. That is the core problem this application seeks to prevent from continuing while the accompanying Rule 20 petition is pending. Once the operative pendency placements were fixed by prior final administrative decisions, DOE was not free to treat those obligations as optional, to be implemented only if and when its internal processes or litigation preferences permitted. As Plaintiffs have repeatedly explained, DOE may not accomplish through delay and unilateral nonpayment what it has never obtained through a stay. See App. A-195, Dkt. 45.2 at 12–20; App. A-226, ECF No. 59 at 1–3; App. A-230, ECF No. 60 at 2–3.

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suspension of pendency. See App. A-60, Dkt. 24.1 at 33–36; App. A-195, Dkt. 45.2 at 12–16.

If DOE believed suspension of its pendency obligations were warranted, the proper course was to seek a stay and carry the burden that any stay applicant must bear. A stay is "not a matter of right," and the party seeking one must justify that intrusion into the ordinary course. *Nken v. Holder*, 556 U.S. 418, 426, 434 (2009); *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). More than that, where the requested relief would alter rather than preserve the status quo, Second Circuit law requires the more demanding showing applicable to mandatory injunctive relief. *Jacobson & Co. v. Armstrong Cork Co.*, 548 F.2d 438, 441 (2d Cir. 1977); *Tom Doherty Assocs., Inc. v. Saban Ent., Inc.,* 60 F.3d 27, 33–34 (2d Cir. 1995); *Jolly v. Coughlin,* 76 F.3d 468, 473 (2d Cir. 1996). That point matters here because any stay of already-operative pendency obligations would not preserve the status quo; it would place students' automatic stay-put rights in abeyance while appellate litigation continued. DOE sought no such relief and made no such showing.

The record shows that Plaintiffs squarely presented that self-stay theory below. In their March 24, 2026 pre-motion letter, Plaintiffs explained that DOE had "effectively and impermissibly granted itself a stay of its Pendency obligations," even though it had never obtained judicial relief authorizing such a result. See App. A-226, ECF No. 59 at 1–2. Plaintiffs further argued that DOE remained liable for the pendency funding it should already have provided unless and until it obtained a stay. See id. at 2–3. The District Court did not grant DOE a stay. Nor did DOE

carry the burden required to obtain one. Instead, DOE simply continued to litigate while withholding implementation, and the District Court ultimately responded not by rejecting the self-stay concern on the merits, but by saying that Plaintiffs had shown no evidence that students' placements were "at risk" and that the court "seriously doubts its jurisdiction" during the interlocutory appeals. See App. A-248, ECF No. 65 at 4–5.

That sequence matters because it shows that the self-stay theory is not rhetorical. It describes what actually happened. DOE did not obtain an order staying its pendency obligations. It did not obtain a narrowing of the operative placements fixed by prior final administrative decisions. It simply treated prolonged nonpayment as though it had the practical effect of a stay and relied on the passage of time to do the work that an actual stay application would have required it to justify. But a stay is not self-executing, and a litigant may not unilaterally suspend compliance with an operative legal obligation merely because further review is ongoing. Here, the effect of DOE's position is to invert § 1415(j): instead of preserving the child's educational program while the case proceeds, DOE's nonpayment forces families and providers to absorb the pressure of continued litigation until the statutory protection becomes hollow in practice.

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already-established pendency over time. See App. A-221, Ex. 1; App. A-195, Dkt. 45.2 at 14–20. No. 26-523 thus showed the downstream consequence of a larger problem already embedded in No. 25-2127: DOE's ability, absent timely judicial intervention, to transform an automatic statutory injunction into a nominal entitlement honored only on paper.

That is why this Court's intervention is needed now. If DOE may continue to withhold implementation unless and until a court affirmatively compels payment on an emergency basis, then stay-put ceases to function as an automatic protection and becomes a right contingent on a family's ability to survive delay. That is precisely what *Murphy* rejected when it held that "access to immediate interim relief is essential for the vindication of this particular IDEA right." 297 F.3d at 200. And it is why the accompanying Rule 20 petition properly frames this case as one in which DOE has been attempting to accomplish through prolonged nonpayment what it has never obtained through a stay. See App. A-195, Dkt. 45.2 at 12–20.

Accordingly, DOE's continued nonpayment should be understood for what it is: not neutral administrative lag, but an unlawful self-effectuated stay of already-operative pendency obligations. Temporary administrative relief is warranted to prevent that self-stay from continuing while the accompanying Rule 20 petition is under consideration.

9. The District Court Has Ceased to Function as a Timely Forum, and the Court of Appeals Is the Only Timely Federal Forum

This application is before the Circuit Justice because the District Court has ceased to function as a timely source of relief, while the broader appeal in No. 25-2127 is fully briefed and remains the only federal vehicle capable of providing timely intervention. The problem is not merely that Plaintiffs lost below on a single motion. It is that every meaningful District Court path to timely enforcement has now been denied, and the District Court has itself indicated that it no longer regards ongoing action as properly within its hands during the pendency of the interlocutory appeals.

The sequence is clear. The District Court first denied Plaintiffs' motion for preliminary injunctive relief, prompting the appeal in No. 25-2127. See App. A-4, Dkt. 2.1 at 1; App. A-1, Dkt. 1.1 at 12. Plaintiffs later returned to seek emergency relief as DOE's nonpayment continued and the consequences of delay became more acute, but that relief, too, was denied. See App. A-195, Dkt. 45.2 at 2–10. When the narrower six-student nursing emergency later matured, Plaintiffs sought Rule 62.1 relief to allow the District Court to address changed circumstances notwithstanding the pending appeals. See App. A-230, ECF No. 60. The District Court denied that request. See App. A-238, ECF No. 61. Plaintiffs then sought leave to pursue contempt-related relief and targeted discovery directed at DOE's ongoing non-implementation of pendency. See App. A-226, ECF No. 59 at 1–3. The District Court denied that relief as well. See App. A-248, ECF No. 65 at 4–5.

The District Court's final ruling is especially significant. In ECF No. 65, the court did not merely reject Plaintiffs' requested relief; it stated that it "seriously

doubts its jurisdiction" to proceed while the interlocutory appeals remain pending. See App. A-248, ECF No. 65 at 5. That statement matters because it confirms what the procedural history had already shown in practice: the District Court is no longer a viable timely forum for protecting the pendency rights at issue here. Whether viewed as a matter of legal jurisdiction, practical posture, or institutional willingness to proceed, the result is the same. Plaintiffs can no longer obtain meaningful interim protection there.

That closure below is what makes present relief from the Circuit Justice necessary. This is not a case in which parallel lower-court proceedings remain available and could still realistically supply timely protection while this Court waits. The District Court has denied the original preliminary-injunction motion, denied later emergency relief, denied Rule 62.1 relief, denied leave to seek contempt-related and discovery-related enforcement, and signaled that it does not regard itself as positioned to act while the appeals remain pending. See App. A-4, Dkt. 2.1 at 1; App. A-230, ECF No. 60; App. A-238, ECF No. 61; App. A-248, ECF No. 65 at 4–5. At that point, the only timely federal forum remaining is the Court of Appeals.

That point has additional force because No. 25-2127 is not an immature or underdeveloped appeal. It is fully briefed. See App. A-60, Dkt. 24.1 at 1; App. A-116, Dkt. 31.1 at 1; App. A-157, Dkt. 39.1 at 1. The broader merits issues are presented. The student-by-student pendency bases are in the record. The legal theory has been fully aired. And the downstream consequences of continued delay

have already become concrete. See App. A-60, Dkt. 24.1 at 14–28; App. A-195, Dkt. 45.2 at 14–20; App. A-230, ECF No. 60 at 1–6. Because the District Court is no longer functioning as a timely forum, the Second Circuit is now the only federal court in a position to act in time on the broader appeal.

That is also why No. 26-523 does not solve the problem. The narrower six-student appeal showed what prolonged delay had already permitted to happen, but it did not replace the broader, antecedent appeal in No. 25-2127. The District Court closure point made in the Rule 22 application in No. 26-523 applies with even greater force here because this application concerns the entire action, not just the narrower downstream emergency. No. 25-2127 is the broader and fully briefed vehicle. Once the District Court ceased to function as a timely source of relief, the need for timely action in that appeal became all the more urgent.

In short, the procedural posture now leaves no realistic lower-court alternative. The District Court has closed as a timely source of relief. The broader appeal is fully briefed. And the continued erosion of stay-put is occurring during the very period in which federal law is supposed to preserve the students' educational status quo. Under these circumstances, the Court of Appeals is the only timely federal forum, and temporary administrative relief is warranted to preserve the status quo while the accompanying Rule 20 petition is under consideration.

10. Temporary Administrative Relief Preserving the Operative All-Students Status Quo Is Warranted Pending Disposition of the Rule 20 Petition

Temporary administrative relief is warranted because Applicants seek only preservation of the operative stay-put status quo already established by prior final administrative decisions and reflected in the record, so that the accompanying Rule 20 petition is not overtaken by events before this Court can act. The relief requested is therefore narrow. It does not ask the Circuit Justice to decide the merits of No. 25-2127, to supervise the Second Circuit in the abstract, or to create a new interim regime. It asks only that Respondents maintain the status quo that federal law and the existing record have already established for all plaintiff-students.

That means maintaining and implementing the already-established pendency placements identified in Dkt. 24.1, together with the funding and related services necessary to make those placements operable in practice. See App. A-60, Dkt. 24.1 at 14–28. Because the operative placements are private placements, preservation of the status quo necessarily includes the tuition, transportation, nursing, and other related services that form part of those students' pendency programs. Without those components, the placements are not preserved in any meaningful sense. They remain only nominally acknowledged while deteriorating in practice.

The requested relief is thus preservative, not expansive. It does not enlarge pendency. It does not seek new substantive entitlements. And it does not ask for relief untethered to the record. It asks only that DOE be required, pending disposition of the accompanying Rule 20 petition, to do what the stay-put provision already requires and what the prior final administrative decisions already fixed:

maintain the students' operative educational placements at public expense while the litigation continues. See App. A-60, Dkt. 24.1 at 14–28, 33–36; App. A-195, Dkt. 45.2 at 12–20.

Absent temporary administrative relief, the status quo will continue to erode while the Rule 20 petition is pending. The District Court has ceased to function as a timely forum, and DOE's nonpayment has already operated as a practical suspension of pendency. Under those circumstances, temporary preservation of the already-established all-students status quo is warranted so that this Court's review is not overtaken by events before it can be meaningfully exercised.

11. Conclusion

Applicants respectfully request that the Circuit Justice enter temporary administrative relief requiring Respondents to preserve and implement the already-established stay-put status quo for all plaintiff-students pending disposition of the accompanying Rule 20 petition. That relief is narrow, preservation-focused, and tied to pendency rights already fixed by prior final administrative decisions and reflected in the existing record. *Murphy* teaches that "access to immediate interim relief is essential for the vindication of this particular IDEA right." 297 F.3d at 200. Without such relief, DOE's self-effectuated suspension of pendency will continue while no effective district-court forum remains and the Rule 20 petition is pending. In the alternative, if the requested relief is not granted outright, Applicants respectfully request an expedited response schedule so that the already-established status quo is not defeated by further delay.

Respectfully Submitted,

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