No. ______

IN THE
SUPREME COURT OF THE UNITED STATES

In re 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.

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

PETITION FOR WRIT OF MANDAMUS

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1. Questions Presented

Whether this Court should issue a writ of mandamus directing the United States Court of Appeals for the Second Circuit to act forthwith in No. 25-2127, a fully briefed appeal in which the district court has denied every timely enforcement vehicle and stated that it "seriously doubts its jurisdiction" while the interlocutory appeals remain pending. [A60; A120; A157; A211-17A252-54]

Whether the Second Circuit's continued failure to act in that fully briefed appeal, after a later narrower emergency matured into actual school-access loss and after the district court ceased functioning as a timely forum, presents the extraordinary circumstances warranting mandamus under Cheney v. U.S. District Court for the District of Columbia, 542 U.S. 367 (2004). [A202-06- ; A211-17; A231-36; A252-54; (Dkt. 46.1 in No. 26-523 at 1–2); A259-62].

2. Parties to the Proceeding

Petitioners 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. Petitioners seek relief in connection with No. 25-2127, the broader, fully briefed appeal arising from the district court's denial of preliminary injunctive relief and concerning enforcement of the Individuals with Disabilities Education Act's stay-put provision, 20 U.S.C. § 1415(j). (A4; A194).

Respondent is the United States Court of Appeals for the Second Circuit, which has before it No. 25-2127, the fully briefed appeal in which Petitioners seek prompt action. (A194).

The Real Parties in Interest are the New York City Department of Education and its Chancellor, sued in her official capacity, the parties against whom Petitioners seek enforcement of IDEA stay-put obligations in the underlying action and on appeal. (A4).

3. Related Proceedings

The underlying district-court action is Bruckauf et al. v. Aviles-Ramos, No. 25-cv-05679 (KPF) (S.D.N.Y.), in which Petitioners sought enforcement of IDEA stay-put rights and related pendency obligations in the action as a whole. [A4; A199-202].

Appeal No. 25-2127 arises from the district court's denial of preliminary injunctive relief and is now fully briefed. (A60; A120; A157). It is the broader, fully briefed appeal concerning the district court's refusal to enforce IDEA stay-put rights in the action as a whole. (A194; A210-15; A198-99; A210-15).

Appeal No. 26-523 is the later, narrower six-student emergency appeal arising from the same underlying district-court action. [A202-09; A264]. As Petitioners have explained, No. 26-523 is a later emergency manifestation of the same unresolved pendency-enforcement dispute, not a substitute for action in No. 25-2127. [(A210-15).

- On April 9, 2026, Petitioners filed a petition under Supreme Court Rule 20 and an emergency application under Supreme Court Rule 22 arising from the continuing absence of timely judicial relief in No. 26-523. On April 9, 2026, Petitioners also filed in No. 25-2127 a reply letter seeking clarification or, in the alternative, limited reconsideration of the Court's April 8, 2026 order denying expedited oral argument, and any response or further order entered on that submission is part of the related proceedings as well. (A266-67).

TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES, REGULATIONS AND RULES

5. Basis for Jurisdiction

This Court's authority to issue the requested writ arises under the All Writs Act, 28 U.S.C. § 1651(a), and Supreme Court Rule 20. The order giving rise to No. 25-2127 is the district court's September 2, 2025 order denying preliminary injunctive relief. (A4). Petitioners timely appealed from that order, and the appeal is docketed in the United States Court of Appeals for the Second Circuit as No. 25-2127.

The writ sought here is in aid of this Court's prospective jurisdiction under 28 U.S.C. § 1254(1). Petitioners seek mandamus to compel action by the court of appeals in that fully briefed appeal. (A60; A120; A157). If the court of appeals acts, its disposition would fall within this Court's certiorari jurisdiction. See 28 U.S.C. § 1254(1).

No direct appeal exists from a court of appeals' failure to act. Petitioners cannot appeal the absence of a ruling, and no lower court may compel the Second Circuit to exercise jurisdiction it already possesses. The district court has, moreover, denied every meaningful enforcement mechanism Petitioners pursued and has stated that it "seriously doubts its jurisdiction" to proceed while the interlocutory appeals remain pending. (A211-12, A215-217; A252-54). Mandamus is therefore the only remaining mechanism by which this Court may protect its prospective jurisdiction and require action on a fully briefed appeal involving a self-executing federal statutory injunction.

6. Constitutional and Statutory Provisions Involved

This petition involves 20 U.S.C. § 1415(j), 28 U.S.C. § 1651(a), and 28 U.S.C. § 1254(1). The pertinent text of those provisions is reproduced in the appendix.

7. Preliminary Statement

This petition seeks a writ directing the United States Court of Appeals for the Second Circuit to act in No. 25-2127, a broader, fully briefed appeal presenting the underlying IDEA stay-put and unlawful-self-stay issues affecting the action as a whole. (A198-99; A215-17; A60; A120; A157). It does not ask this Court to decide the merits of that appeal in the first instance, and it does not seek to direct any particular merits result. It asks only that the court of appeals exercise the jurisdiction it already has over a fully briefed appeal that has remained unresolved while the district court has denied every meaningful enforcement vehicle and the consequences of delay have now become concrete. (A198-99; A215-17; A252-54).

Petitioners' legal position has remained the same since this action was filed in July 2025. Petitioners have consistently argued that the IDEA's stay-put provision, 20 U.S.C. § 1415(j), is self-executing; that, under Honig v. Doe, 484 U.S. 305, 323 (1988), and Zvi D. ex rel. Shirley D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982), it operates as an automatic injunction preserving the status quo; that, under Murphy v. Arlington Central School District Board of Education, 297 F.3d 195, 199–200 (2d Cir. 2002), Mackey ex rel. Thomas M. v. Board of Education for the Arlington Central School District, 386 F.3d 158, 160–61 (2d Cir. 2004), and Ventura de Paulino v. New York City Department of Education, 959 F.3d 519, 529 & n.50 (2d Cir. 2020), public funding necessary to maintain the placement is part of that protected status quo; and that DOE may not accomplish through prolonged nonpayment what it has never obtained through a stay. (A209-11; A232-36). Petitioners preserved that position expressly in the district court, including in ECF No. 60, where they explained that irreparable harm is not required to enforce established stay-put rights, that Abrams v. Carranza, No. 19-CV-4175 (AJN), 2019 WL 2385561, at *2–4 (S.D.N.Y. June 6, 2019), and Mendez v. Banks, 65 F.4th 56, 64–65 (2d Cir. 2023), are continuous rather than conflicting, and that by late March 2026 the case was far beyond any plausible dispute about "fast-track" payment because the 2025–2026 school year had already been running for 262 days. (A232-36).

More than two decades ago, 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, 297 F.3d at 200. (A217). That sentence should control the perspective from which this petition is viewed. By April 2026—more than 270 days after the 2025–2026 school year began and more than 270 days after this action was filed—no one can seriously maintain that Petitioners have had "access to immediate interim relief." (A198; A215-1; A232-36). The law has not changed by act of Congress, by decision of this Court, or by intervening Second Circuit precedent. What changed is the cost of continued delay.

The principal obstacle throughout has not been uncertainty in the governing legal framework, but the district court's repeated insistence on a different one. Petitioners consistently argued that stay-put enforcement did not require a separate showing of irreparable harm. (A232-36). The district court nevertheless repeatedly treated the case as though it were governed by the ordinary four-factor preliminary-injunction framework and repeatedly demanded proof that students' placements were "at risk" or that irreparable harm had been shown. (A235-36; A252-54). Even in its final denial of contempt-related relief and accelerated discovery, the district court did not engage stay-put as a self-executing statutory injunction. Instead, after Petitioners argued that DOE remained liable for pendency funding unless and until it obtained a stay, see Draper v. Atlanta Independent School System, No. 1:06-CV-487-MHS, 2006 U.S. Dist. LEXIS 40964, at *35–36 (N.D. Ga. June 19, 2006), and that violation of the stay-put provision may be punishable by contempt, see Casey K. v. St. Anne Community High School District No. 302, 400 F.3d 508, 511 (7th Cir. 2005), the court responded that Petitioners 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. (A224-30; A252-54). Thus, the broader appeal in No. 25-2127 is not merely a scheduling matter; it is the fully briefed appeal from a district-court course of decision that repeatedly forced an automatic federal injunction into a discretionary irreparable-harm framework Petitioners consistently argued was legally inapplicable.

No. 25-2127 is the broader vehicle, and No. 26-523 arose only because No. 25-2127 did not produce timely relief. The renewed FRAP 27 motion explained that the appeal is now fully briefed, that the district court has denied the original preliminary-injunction request, later emergency relief, Rule 62.1 relief, and even leave to brief contempt or obtain accelerated discovery, and that the district court has effectively become "foreclosed as [a] viable forum for relief." (A215-17; A252-54]). The later six-student nursing emergency did not introduce a new legal theory; it demonstrated what prolonged inaction in the broader appeal had already allowed to happen in practice. (A202-05, A215-17). In that sense, No. 26-523 is not a substitute for No. 25-2127. It is the narrower emergency manifestation of the same unresolved pendency-enforcement breakdown presented in the broader, fully briefed appeal.

This petition therefore presents a straightforward but extraordinary question: whether a fully briefed appeal involving an automatic federal injunction may remain unresolved while the district court has shut every remaining enforcement door and the downstream consequences of delay have already materialized. Petitioners respectfully submit that it may not. Then-Judge Sotomayor's recognition in Murphy that "access to immediate interim relief is essential for the vindication of this particular IDEA right" was not an aspirational observation. It was a statement about the nature of the right itself. (A217). Where, as here, the broader appeal that should have supplied that immediacy remains fully briefed but undecided while no timely district-court avenue remains, a writ directing the court of appeals to act is not an intrusion into the merits. It is the only remaining means of preventing the right from being rendered ineffectual by delay.

8. Summary of Argument

Mandamus is warranted under Cheney v. U.S. District Court for the District of Columbia, 542 U.S. 367 (2004), because all three requirements are satisfied here: Petitioners have no other adequate means to obtain relief, their right to relief is clear and indisputable, and issuance of the writ is appropriate under the circumstances. Petitioners do not ask this Court to decide the merits of No. 25-2127 in the first instance, nor do they seek an order dictating how the court of appeals must rule. They ask only that this Court require the Second Circuit to act on a broader appeal that is now fully briefed and that has remained unresolved while the school year ran, the district court ceased to function as a timely forum, and the consequences of delay ripened from threatened disruption into actual loss of school access. (A60; A120; A157; A-198-99; A205-06; A211-17; A252-54).

First, Petitioners have no other adequate means to obtain relief. The district court denied the original preliminary-injunction motion, later denied October 2025 emergency relief, denied Rule 62.1 relief after the six-student nursing interruption became date-certain, and then denied even leave to brief contempt or obtain accelerated discovery. (A4; A252-54). In that final ruling, the district court stated that it "seriously doubts its jurisdiction" to proceed while the interlocutory appeals remain pending. (A252-54). No lower court can compel the Second Circuit to decide a case already within its jurisdiction, and Petitioners cannot appeal the court of appeals' failure to act. The narrower later appeal, No. 26-523, does not supply an adequate substitute. That appeal arose only after prolonged nonaction in No. 25-2127 allowed the broader dispute to contract into a six-student nursing emergency. No. 26-523 demonstrates the consequences of delay; No. 25-2127 is the broader, fully briefed appeal that should have prevented those consequences in the first place. (A202-06, A210-17); (A259-62).

Second, Petitioners' right to relief is clear and indisputable because the governing law is settled and the legal question presented by the appeal has not materially changed since July 2025. The IDEA's stay-put provision functions as an automatic statutory injunction preserving the student's then-current educational placement during review proceedings. 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). Where the operative placement is private, public funding necessary to maintain that placement is part of pendency, because cutting off that funding effects a unilateral change in placement. Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 199–200 (2d Cir. 2002); 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 v. N.Y.C. Dep't of Educ., 959 F.3d 519, 529 & n.50 (2d Cir. 2020). Abrams v. Carranza, No. 19-CV-4175 (AJN), 2019 WL 2385561, at *2–4 (S.D.N.Y. June 6, 2019), and Mendez v. Banks, 65 F.4th 56, 63–65 (2d Cir. 2023), do not unsettle that rule; read together, they confirm that stay-put remains automatic, while preserving relief where delayed payment jeopardizes the student's educational placement. (A224-30; A232-45). Petitioners' legal position has therefore remained constant from the complaint through the preliminary-injunction motion, the later TRO filings, the Rule 62.1 motion, and the renewed expedition request: DOE may not achieve through prolonged nonpayment what it has never sought or obtained through a stay. (A205-15; A224-30; A232-45)

What changed was not the law, but the cost of delay under unchanged law. The district court repeatedly demanded a showing of irreparable harm anyway, repeatedly treated actual school-access jeopardy as unproven, and continued doing so even after Petitioners invoked contempt and self-stay principles. (A4; A232-36; A252-54). Yet by late March 2026, the narrower emergency had matured into actual cessation of 1:1 travel nursing and school-day nursing, and Petitioners informed the Second Circuit that the interruption was "actual and ongoing." (A231-34; A236-37; A259-62]. At that point, no novel legal issue remained. The only unresolved problem was continued inaction in a fully briefed appeal despite a settled legal framework and a record confirming the practical consequences of delay. (A60; A120; A157; A205–17).

Third, issuance of the writ is appropriate under the circumstances. Petitioners seek only action, not a merits result. (A198; A215-17). But the circumstances are extraordinary because delay itself has become legally significant. The Second Circuit has recognized that "access to immediate interim relief is essential for the vindication of this particular IDEA right." Murphy, 297 F.3d at 200. (A-214-15). That principle means that prolonged nonaction can defeat stay-put in practice even without a formal merit ruling, because once the protected status quo is disrupted, later vindication is not an adequate substitute. Here, No. 26-523 shows exactly what delay in No. 25-2127 has permitted: the gradual contraction of a broader, fully briefed stay-put appeal into a narrower emergency involving actual school-access loss. (A-202-206, A211-17); (Dkt. 46.1 in No. 26-523 at 1–2); A259-62). Where continuing delay is functionally nullifying an automatic statutory injunction, and where the district court has withdrawn as a timely enforcement forum, mandamus directing the court of appeals to act is the minimum relief necessary to preserve the judicial function and prevent the right from being lost through inertia. (A252-54; A-211-17).

9. Statement of the Case

9.A. Plaintiffs' legal position has remained the same since July 2025: stay-put is automatic and irreparable harm is not required

From the outset of this litigation, Plaintiffs' position has been that IDEA stay-put rights are automatic, that ordinary irreparable-harm balancing does not govern enforcement of an established pendency placement, and that DOE cannot defeat those rights through prolonged nonpayment. [A232-36; A209–11, A215-17]. Plaintiffs' complaint and original motion practice sought judicial recognition and enforcement of each student's pendency placement, together with the public funding necessary to maintain that placement, on the understanding that 20 U.S.C. § 1415(j) is self-executing. (Dkt. 9.2 at 9–10, 17–18 in 25-cv-05679); (ECF No. 8 at 1, 12, 19–21 in 25-cv-05679).

That position rested on settled authority. In Honig v. Doe, 484 U.S. 305, 323 (1988), this Court explained that Congress enacted the stay-put provision to strip school authorities of the unilateral power to alter a disabled child's educational placement while proceedings are pending. And in Zvi D. ex rel. Shirley D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982), the Second Circuit held that § 1415(j) functions as an automatic injunction that substitutes a rule preserving the status quo for ordinary equitable balancing. Plaintiffs consistently relied on that principle in arguing that ordinary Rule 65 analysis did not govern enforcement of already-established pendency placements. (ECF No. 8 at 12, 19–21 in 25-cv-05679); (ECF No. 30 at 20–22) in 25-cv-05679; (A232-36).

Plaintiffs likewise maintained throughout that where the operative placement is private, the public funding necessary to maintain that placement is part of pendency itself. Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 199–200 (2d Cir. 2002); 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 v. N.Y.C. Dep't of Educ., 959 F.3d 519, 529 & n.50 (2d Cir. 2020). Plaintiffs therefore argued not merely that DOE owed money, but that DOE could not accomplish through prolonged nonpayment what it had never sought or obtained through a stay: the practical suspension of pendency itself. (ECF No. 30 at 27–28 25-cv-05679); (ECF No. 47-3 at 6–8 25-cv-05679); A224-30; A232-36).

9.B. The district court repeatedly imposed an irreparable-harm / placements-at-risk framework that Plaintiffs consistently argued was legally inapplicable

This case did not merely sit while harm accumulated; it proceeded for months under a district-court framework that Plaintiffs consistently argued was legally inapplicable to established stay-put rights. Plaintiffs repeatedly maintained that the automatic force of § 1415(j) displaced ordinary irreparable-harm balancing. (ECF No. 8 at 12, 19–21 25-cv-05679); (ECF No. 30 at 20–22 25-cv-05679); (A232-36). The district court nevertheless repeatedly demanded precisely that showing.

During the August 14, 2025 conference, the court stated that it did not believe the facts "warrant injunctive relief under the traditional four-factor test," and added: "I don't see irreparable harm. I'm not—I just don't." (A234-35). The court further 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." (A235). It then reiterated that "there is no showing of irreparable harm here because you're conflating your irreparable harm into your success on the merits issues," and concluded that it would not grant preliminary injunctive relief. (A235).

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." (A235). The court defined irreparable harm as injury "that is not remote or speculative but actual and imminent, for which a monetary award cannot be adequate compensation," 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." (ECF No. 60 at 3, 6–7 (quoting Mar. 5, 2026 Hr'g Tr. 127:13–18, 129:16–20 in 25-cv-05679, Ex. B to Dkt. 29.1, No. 26-523).

That same misframing 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 Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302, 400 F.3d 508, 511 (7th Cir. 2005), for the proposition that violation of the stay-put provision may be punishable by contempt. (A224-3). 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" and that it "seriously doubts its jurisdiction" to proceed while the interlocutory appeals remain pending. (ECF No. 65 at 4–5, in 25-cv-05679). Thus, the same legally inapplicable framework shaped the case from the original preliminary-injunction denial through the district court's final refusal to entertain contempt-related relief.

9.C. Abrams and Mendez establish continuity, not conflict; DOE and the district court used Mendez as if it had changed the law

Plaintiffs consistently argued that Abrams and Mendez establish continuity, not conflict. In Abrams v. Carranza, No. 19-CV-4175 (AJN), 2019 WL 2385561, at *2–4 (S.D.N.Y. June 6, 2019), then-District Judge Nathan wrote that, in the pendency context, "the preliminary injunction analysis is truncated," because § 1415(j) functions as an "automatic preliminary injunction" displacing the ordinary irreparable-harm and balancing inquiry. (ECF No. 60 at 2–3 in 25-cv-05679). Four years later, writing for the Second Circuit in Mendez v. Banks, 65 F.4th 56, 63–65 (2d Cir. 2023), Judge Nathan did not retreat from that principle. Rather, the court 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." (ECF No. 60 at 2–3 in 25-cv-05679); (ECF No. 47-3 at 4–6 in 25-cv-05679).

Read together, Abrams and Mendez establish continuity, not conflict: stay-put remains automatic, and judicial relief remains available when DOE's delay jeopardizes implementation of the protected placement. (ECF No. 60 at 2–3 in 25-cv-05679). Plaintiffs' position throughout this case tracked that understanding. They did not argue that every payment dispute automatically compels judicial micromanagement. They argued that where DOE's nonpayment functionally disrupts the placement itself, judicial enforcement remains available under settled law. (ECF No. 47-3 at 4–10 in25-cv-05679); A232-A244).

By March 28, 2026, DOE's position could no longer plausibly be characterized as resistance to "fast-track" payment rather than prolonged defeat of pendency through nonpayment. As Plaintiffs explained in ECF No. 60, the 2025–2026 extended school year had begun on July 9, 2025, and by March 28, 2026, 262 days had elapsed. (A232-A235)[. At that point, after months of delay, repeated administrative extensions, and repeated assurances that payments would issue in the "ordinary course" or "normal course of business," it "defie[d] credulity" to describe the request as one for accelerated payment rather than an effort to prevent DOE from defeating pendency through prolonged nonpayment. (ECF No. 60 at 2–3 in 25-cv-05679).

9.D. Murphy made immediacy part of the right, and that timing principle has been denied in practice here

Murphy did not merely recognize a right to eventual relief; it recognized that the right depends on immediacy, and this appeal demonstrates what happens when that immediacy is denied. In Murphy v. Arlington Central School District Board of Education, 297 F.3d 195, 200 (2d Cir. 2002), then-Judge Sotomayor wrote that "access to immediate interim relief is essential for the vindication of this particular IDEA right." (A214-A216); (ECF No. 47-3 at 1 in 25-cv-05679). That timing principle is not incidental. It explains why stay-put claims are treated differently from ordinary merits claims and why delayed vindication is often no vindication at all.

The same opinion explains why exhaustion is relaxed in this context: a belated ruling upholding stay-put rights cannot remedy the disruption already suffered once the educational status quo has been disturbed. Murphy, 297 F.3d at 199–200. Plaintiffs repeatedly invoked that point below and on appeal, because the entire premise of stay-put is continuity during the dispute, not compensation after the fact. (ECF No. 8 at 12, 19–21 in 25-cv-05679); A214-A215).

By April 2026, more than 270 days had passed since the complaint was filed on July 9, 2025, and since the 2025–2026 school year began. (A224-A215, A199, A214-A216). No one can seriously maintain that Petitioners had "access to immediate interim relief" within the meaning of Murphy. The broader appeal is fully briefed, the district court has shut every remaining timely enforcement route, and the later six-student emergency has matured into actual school-access loss. Under Murphy's own timing principle, that is not a mere scheduling problem. It is the denial in practice of the immediacy the right requires. (A214-A216; A252-A254).

9.E. The district court's denial of preliminary relief gave rise to the broader appeal in 25-2127

Plaintiffs filed this action on July 9, 2025, seeking judicial recognition and enforcement of pendency under 20 U.S.C. § 1415(j) for the students in the case. (ECF No. 1 ¶¶ 268–280, 290 in 25-cv-05679). On July 15, 2025, Plaintiffs moved for preliminary injunctive relief to require DOE to recognize and fund those pendency placements. (ECF No. 8 at 1, 19–21 in 25-cv-05679).

The district court denied preliminary relief in an oral ruling on August 14, 2025, later memorialized in a written order on September 2, 2025. (Dkt. 9.2 at 18); (Dkt. 2.1 at 1 in 25-cv-05679) Plaintiffs then timely filed a notice of appeal, commencing No. 25-2127. From the beginning, Plaintiffs treated the appeal as urgent and formally requested expedited briefing through Dkt. 9.1 and Dkt. 9.2. in 25-2127); (Dkt. 9.2 at 1, 13–21 in 2127). The Court denied that early expedition request in September 2025. (Dkt. 20.1 at 1 in 25-2127).

This sequence matters because it shows that No. 25-2127 has been the principal appellate vehicle from early on. The later six-student emergency did not create the broader appellate dispute; it emerged after the broader appeal had already been noticed and left unresolved.

9.F. No. 25-2127 became fully briefed

No. 25-2127 is no longer an immature appeal awaiting development. Plaintiffs filed their opening brief on December 9, 2025. (Dkt. 24.1 at 1)]. Appellees filed their response on March 10, 2026. (Dkt. 31.1 at 1). Plaintiffs then filed their reply, completing merits briefing. (Dkt. 39.1 at 1)].

By the time Plaintiffs filed their renewed FRAP 27 motion on April 6, 2026, the appeal was therefore fully briefed and ripe for decision. (A199-A201, A215-A217. Plaintiffs did not ask the court of appeals to reopen briefing or to accelerate an underdeveloped appeal. They asked the court to act on an appeal that had already been fully presented and that now stood as the broader appellate vehicle while the district court withdrew as a timely source of relief. (A215-A217)

No oral argument had been set. (Dkt. 45.1 at 1). Thus, by April 2026, the obstacle to timely relief was not lack of development in the appeal, but continued inaction on a record that was already complete.

9.G. While the appeal remained unresolved, DOE continued withholding pendency funding across the case

While No. 25-2127 remained pending, DOE continued withholding pendency funding across the case. Plaintiffs returned to the district court in October 2025 and advised that DOE still had not issued required pendency payments apart from a single partial nursing payment; they sought emergency TRO and preliminary-injunction relief, and the court denied that request. A199-A201; (ECF No. 27 at 1–3); (ECF No. 28 in 25-cv-05679). Even after those emergency filings, DOE's response followed the same pattern Plaintiffs had identified from the outset: prolonged withholding, emergency motion practice, denial of relief, and later partial payments used to argue that no genuine emergency existed. (A199-A201).

By February 12, 2026, DOE's repeated invocation of the "ordinary course of business" no longer matched the record. Plaintiffs documented $9,718,679.41 in outstanding pendency obligations in this case alone, including $7,375,319.60 in zero-payment service categories for which not a single payment had been issued during the school year. (A219-A221). Plaintiffs also reported that “[n]o nursing payments have been issued for any student since that time.” (A221). Those figures did not reflect an isolated billing dispute; they showed a broader, all-students pendency-enforcement failure continuing while the appeal remained pending. (A212-A213, A214-A21).

DOE nevertheless continued to rely on assurances that payments would issue in the “ordinary course” or “normal course of business.” (A232-A236, A212-215). By late March 2026, with roughly two months remaining in a twelve-month school year, that framing no longer fit the reality of the case. (A211-A213). The broader problem was not confined to six students or one provider; it affected the implementation of pendency across the entire action while No. 25-2127 remained unresolved. (A219-A221, A211-A216).

9.H. Plaintiffs also showed that some courts treat stay-put so strongly that even a stay of its enforcement runs contrary to Congress’s design

Plaintiffs’ position was not an outlier. Beyond binding Supreme Court and Second Circuit authority, other courts have treated § 1415(j) so strongly that a school district may not lightly suspend it through an ordinary stay of enforcement without undercutting Congress’s design. Plaintiffs argued below that some jurisdictions have gone even further, holding that because stay-put itself creates an automatic injunction, staying its enforcement would contravene the statute's purpose. (A225-A229).

Thus, in John M. v. Board of Education of Evanston Township High School District 202, No. 05-C-6720, 2006 U.S. Dist. LEXIS 73826, at *19–21 (N.D. Ill. Sept. 26, 2006), the court reasoned that staying stay-put relief would undermine Congress's intent. Similarly, School District of Philadelphia v. Kirsch, No. 14-CV-4910, 2017 U.S. Dist. LEXIS 3907, at *15–21 (E.D. Pa. Jan. 11, 2017), and Board of Education of the County of Boone v. K.M., No. 2:14-CV-10563, 2015 WL 12851320, at *5 (S.D.W. Va. Mar. 31, 2015), reflect the same understanding that § 1415(j) cannot lightly be displaced through stay mechanisms. (A225-A229).

These authorities were not offered as binding Second Circuit law. They were cited to confirm that Plaintiffs' theory—that DOE could not accomplish through delay and nonpayment what it had never obtained through a stay—fell well within the mainstream of stay-put jurisprudence rather than at its margins. (A225-A229).

9.I. The district court then closed every remaining timely enforcement vehicle

The district court did not merely deny relief on the merits; through a sequence of rulings culminating in ECF No. 65, it closed every meaningful procedural vehicle through which Plaintiffs attempted to obtain timely enforcement of pendency. Plaintiffs sought relief through the original preliminary-injunction motion, the October 2025 emergency motion, the February 2026 six-student nursing TRO, Rule 62.1 relief, and finally ECF No. 59's request for leave to brief contempt and obtain accelerated discovery. (A211-A213); (224-A229); (A232-A244), (A252-A254).

ECF No. 59 is especially important because it shows both the maturity of the case and the persistence of Plaintiffs' theory. By March 25, 2026, Plaintiffs emphasized that the school year had begun 258 days earlier, that there had been "no material change" since the February 12 status letter, 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." (A224-A226). Plaintiffs expressly argued that DOE remained liable for the pendency funding it should already have provided unless and until it obtained a stay, and cited Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302, 400 F.3d 508, 511 (7th Cir. 2005), for the proposition that violation of the stay-put provision may be punishable by contempt. (226-A229).

DOE opposed 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 be made "in due course." (A247-A252). On April 3, 2026, the district court denied contempt-related relief and accelerated discovery, held that Plaintiffs had not identified a violated order, 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 are pending. (A252-254).

That sequence underscores the contradiction at the core of this petition. Plaintiffs argued that DOE remained liable unless and until it obtained a stay, and invoked contempt / self-stay principles. The district court responded not by engaging stay-put as a self-executing injunction, but by demanding proof that placements were "at risk," thereby continuing the same legally inapplicable framework that had shaped the case from the beginning. (A226-A229); (A252-A254).

9.J. The later six-student nursing collapse arose from the same broader unresolved pendency-enforcement dispute

No. 26-523 did not replace No. 25-2127; it arose because the broader appeal did not produce timely relief and the district court had ceased to function as a timely enforcement forum. As the renewed FRAP 27 motion explained, the later six-student emergency was not a new dispute but a narrower manifestation of the same unresolved pendency-enforcement failure. (A199-206, A215-17).

By February 2026, Plaintiffs narrowed the emergency posture to six students whose medically necessary 1:1 nursing services were at imminent risk of interruption due to DOE's prolonged nonpayment. (ECF No. 47-3 at 1–10 in 25-cv-05679); A202-A206). Plaintiffs argued that loss of those nursing services would prevent the students from safely commuting to or attending iBRAIN, and therefore threatened pendency itself. (ECF No. 47-3 at 5–10 in 25-cv-05679). After the district court denied relief on March 5, 2026, Plaintiffs immediately appealed, creating No. 26-523. (ECF No. 53 at 1 in 25-cv-05679).

The same month, the feared interruption became actual. Plaintiffs informed the district court in ECF No. 60 that 1:1 nursing services for the six students would be discontinued beginning March 30, 2026, and that without those services the students could not travel to or attend iBRAIN. (ECF No. 60 at 1–2 in 25-cv-05679). Plaintiffs then notified the Second Circuit that the interruption was "actual and ongoing," and on April 2, 2026, advised that the trigger previously identified as the foreseeable consequence of prolonged nonpayment "is now occurring in real time." (Dkt. 46.1 in No. 26-523 at 1–2); A259-263).

That narrower emergency, however, did not supersede the broader appeal. It proved what the unresolved broader appeal had already allowed to happen in practice: a pendency-enforcement dispute affecting all students had, through prolonged delay and closure below, contracted into a narrower school-access emergency. (A202-206, A215-217).

9.K. Plaintiffs renewed their request for expedition in a materially different posture, and the Court denied only expedited oral argument

By April 2026, the posture of No. 25-2127 was materially different from the one the court confronted when it denied expedition in September 2025. At that earlier stage, briefing was incomplete. By April 6, 2026, however, the appeal was fully briefed, the October 2025 emergency sequence had occurred, the February 12 arrears record had been created, the six-student nursing emergency had matured, Rule 62.1 relief had been denied, and the district court had denied even leave to pursue contempt-related relief while stating that it "seriously doubts its jurisdiction." (A205-17; A252-254)

Plaintiffs therefore filed a renewed motion under Federal Rule of Appellate Procedure 27 seeking expedited consideration of the fully briefed appeal, calendaring of oral argument, or, alternatively, disposition on the existing briefs. [A-199; A215-17]. The motion expressly explained that "[t]he legal request has not changed; only the urgency of the facts has," and that no meaningful lower-court path remained. [A208; A211-217].

DOE's opposition did not meaningfully engage that broader no-forum-left point. Instead, it attempted to recharacterize the motion as an effort to obtain speedy resolution of a six-student nursing dispute and pointed to merits scheduling in No. 26-

523. (A264-65). On April 8, 2026, the Court denied only “the motion to expedite oral argument.” [A266-67]. Plaintiffs then filed a reply / clarification letter on April 9, 2026, explaining that their motion had also requested expedited disposition on the briefs or such other expedited process as the Court deemed appropriate, and that No. 25-2127 remained the broader, fully briefed appeal while No. 26-523 was the narrower downstream emergency. (Dkt. 49.1 at in 25-523).

10. Reasons for Granting the Writ

10.A. Cheney standard

Mandamus is extraordinary, but it is proper where petitioners show that they have no other adequate means to obtain relief, that their right to issuance of the writ is clear and indisputable, and that the writ is appropriate under the circumstances. Cheney v. U.S. Dist. Ct. for the Dist. of Columbia, 542 U.S. 367, 380–81 (2004). Those requirements are satisfied here. Petitioners do not seek merits adjudication from this Court in the first instance. They seek only an order requiring the Second Circuit to act on a broader appeal that is fully briefed, that presents settled stay-put issues, and that has remained unresolved while the district court withdrew as a timely forum and the downstream consequences of delay became actual.

10.B. Petitioners have no other adequate means to obtain relief

Petitioners have no other adequate means to obtain relief because every meaningful district-court enforcement vehicle has been denied, and no appeal lies from appellate inaction itself. The district court denied the original preliminary-injunction motion, later denied October 2025 emergency relief, denied Rule 62.1 relief after the six-student cessation became date-certain, and then denied even leave to pursue contempt-related relief or accelerated discovery. In ECF No. 65, the court stated that it "seriously doubts its jurisdiction" to proceed while the interlocutory appeals remain pending. That ruling effectively closed the district court as a timely forum.

After ECF No. 65, timely federal relief could come only from the Court of Appeals. Appellees did not meaningfully engage that point in opposing renewed expedition; instead, they attempted to recast the broader fully briefed appeal as though it were merely a six-student nursing matter and pointed to merits scheduling in No. 26-523. But No. 26-523 is narrower and downstream. It arose only because prolonged inaction in No. 25-2127 allowed the broader dispute to contract into a six-student emergency. It cannot substitute for action in the broader appeal involving all students and the underlying automatic-injunction/self-stay dispute.

Nor is there any ordinary avenue to challenge the Second Circuit's failure to act. Petitioners cannot appeal the absence of a ruling, and no lower court can compel the court of appeals to exercise jurisdiction it already possesses. Mandamus is therefore the only remaining mechanism by which this Court can protect its prospective jurisdiction and require action on a fully briefed appeal before the right at issue is defeated by delay.

10.C. Petitioners' right to issuance of the writ is clear and indisputable

Petitioners' right to issuance of the writ is clear and indisputable because the governing legal framework is settled, Plaintiffs' position has remained unchanged since July 2025, the appeal is fully briefed, and no intervening legal development explains continued delay. This Court and the Second Circuit have long recognized that IDEA stay-put functions as an automatic statutory injunction preserving the child's then-current educational placement during review proceedings. 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). In private-placement cases, public funding necessary to maintain the placement follows from the placement itself. Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 199–200 (2d Cir. 2002); 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 v. N.Y.C. Dep't of Educ., 959 F.3d 519, 529 & n.50 (2d Cir. 2020). And Abrams and Mendez establish continuity, not conflict: stay-put remains automatic, while judicial relief remains available where DOE's delay jeopardizes implementation of the placement. Abrams v. Carranza, No. 19-CV-4175 (AJN), 2019 WL 2385561, at *2–4 (S.D.N.Y. June 6, 2019); Mendez v. Banks, 65 F.4th 56, 63–65 (2d Cir. 2023). Plaintiffs pressed that same theory from the complaint, through the preliminary-injunction motion, through the October emergency filings, through ECF Nos. 59 and 60, and into the renewed FRAP 27 motion.

The clarity of Petitioners' position is reinforced by the Second Circuit's own recognition, in an opinion authored by then-Judge Sotomayor, that "access to immediate interim relief is essential for the vindication of this particular IDEA right." Murphy, 297 F.3d at 200. Whatever else may be disputed, no one can plausibly maintain that parents who filed suit in July 2025 and whose broader appeal is fully briefed in April 2026 have been afforded the "immediate interim relief" Murphy deemed essential. The law did not change; the cost of delay did. By March and April 2026, the district court had continued to impose an irreparable-harm / placements-at-risk framework Plaintiffs had consistently argued did not apply, and the narrower emergency had matured into actual school-access loss. That sequence removed any claim that this case remained legally immature or factually speculative. What remained was a fully briefed appeal, a settled body of law, and continued inaction despite a record showing that delay was now defeating pendency in practice.

10.D. Issuance of the writ is appropriate under the circumstances

Issuance of the writ is appropriate under the circumstances because Petitioners ask only that the

Second Circuit act; they do not ask this Court to decide the merits in the first instance. That is a narrow and institutionally restrained request. But the surrounding circumstances are extraordinary. The broader appeal is fully briefed, it affects all students in the district-court action, the district court has closed every remaining timely enforcement vehicle, and the later six-student collapse shows that delay is no longer theoretical. What Murphy described as "immediate interim relief" has, in practice, been denied through delay. Under these circumstances, a writ directing the court of appeals to act is appropriate not because this Court should decide the merits in the first instance, but because continued inaction now threatens to make the statutory right itself ineffectual.

Later relief after the school year is not a meaningful substitute. Once the protected status quo is disrupted, later vindication cannot restore lost school access, missed related services, or the continuity that stay-put is meant to preserve. That is exactly why the Second Circuit tied this right to immediacy in Murphy, and exactly why the six-student collapse matters here: it shows what prolonged inaction in the broader appeal has already permitted to happen. Where continuing delay is functionally nullifying an automatic statutory injunction, and where no timely district-court forum remains, requiring the court of appeals to act is the minimum relief necessary to preserve the judicial function.

11. Why 25-2127 is, in one respect, an even cleaner supervisory vehicle than 26-523

While No. 26-523 demonstrates what prolonged inaction has already permitted to happen, No. 25-2127 presents the broader, fully briefed appeal that should have prevented that result and now warrants especially prompt action. No. 26-523 is narrower and emergency-specific. It concerns the six-student nursing collapse that later arose out of the broader dispute. No. 25-2127, by contrast, is fully briefed, concerns all students in the district-court action, and presents the underlying automatic-injunction/self-stay issues that have shaped the litigation since July 2025. In other words, No. 26-523 shows downstream consequence; No. 25-2127 presents the antecedent appellate failure that allowed that consequence to occur. That makes No. 25-2127, in one important respect, the cleaner supervisory vehicle for mandamus.

12. Requested Relief

For the foregoing reasons, Petitioners respectfully request that this Court issue a writ of mandamus directing the United States Court of Appeals for the Second Circuit to act forthwith in No. 25-2127. In the alternative, Petitioners request an order directing the court of appeals promptly to resolve the fully briefed appeal on the existing briefs or otherwise to employ prompt process sufficient to ensure meaningful judicial action. Petitioners further request any ancillary relief necessary to preserve this Court's prospective jurisdiction and to prevent the stay-put right at issue from being rendered ineffectual through continued delay.

13. Conclusion

This case involves a broader, fully briefed appeal affecting all students in the action, not a late-emerging dispute of recent vintage. The governing stay-put law has not changed. What has changed is that immediate interim relief, which Murphy recognized as essential, has been denied in practice while the district court has closed as a timely forum and the downstream consequences of delay have become actual. Petitioners therefore respectfully request that the writ of mandamus issue.

Respectfully Submitted,

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APPENDIX

TABLE OF CONTENTS

NOTICE OF APPEAL, DATED SEPTEMBER 2, 2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
____X

OLIVER BRUCKAUF, as Parent and Natural Guardian of E.B., and OLIVER BRUCKAUF, Individually; JANERIS RODRIGUEZ MEJIA, as Parent and Natural Guardian of E.R., and JANERIS RODRIGUEZ MEJIA, Individually; MAYTINEE BIRD, as Parent and Natural Guardian of H.C., and MAYTINEE BIRD, Individually; DONNA CORNETT, as Parent and Natural Guardian of J.B., and DONNA CORNETT, Individually; KAMOLPORN LUMMAYOS, as Parent and Natural Guardian of R.L., and KAMOLPORN LUMMAYOS, Individually; CLAUDIA RIVAS, as Parent and Natural Guardian of S.C., and CLAUDIA RIVAS, Individually; SANDRA LEE, as Parent and Natural Guardian of V.G., and SANDRA LEE, Individually; CRYSAL CROSLEY, as Parent and Natural Guardian of Z.C., and CRYSAL CROSLEY, Individually; MADELINE GRULLON, as Parent and Natural Guardian of C.B., and MADELINE GRULLON, Individually; MARIA HIDALGO, as Parent and Natural Guardian of L.S., and MARIA HIDALGO, Individually; ADEJUMOKE OGUNLEYE, as Parent and Natural Guardian of D.O., and ADEJUMOKE OGUNLEYE, Individually; ROSA ELBA de PAULINO, as Parent and Natural Guardian of R.P., and ROSA ELBA de PAULINO, Individually; MARTINE THOMAS and SCOTT

THOMAS, as Parents and Natural Guardians of A.T.1, and MARTINE THOMAS and SCOTT THOMAS, Individually; SHANTEL TALLEY, as Parent and Natural Guardian of A.C., and SHANTEL TALLEY, Individually; MARLENE VASQUEZ, as Parent and Natural Guardian of L.C., and MARLENE VASQUEZ, Individually; LINDA LARACH-COHEN, as Parent and Natural Guardian of M.C., and LINDA LARACH-COHEN, Individually; MARILYN BECKFORD, as Parent and Natural Guardian of M.B., and MARILYN BECKFORD, Individually; PATRICK DONOHUE, as Parent and Natural Guardian of S.J.D., and PATRICK DONOHUE, Individually,

Plaintiffs,

-against- 25-cv-5679

David C. Banks, in his 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 appeal to the United States Court of Appeals for the Second Circuit.

The Plaintiffs appeal from Order of the Hon. Judge Katherine Polk Failla, U.S.D.J. [Dkt. No. 20], entered on September 2, 2025, denying Plaintiff's Motion for Preliminary Injunction for the reasons she stated during a telephone conference with the parties held on August 14, 2025 [Dkt. No. 16 and Minute Entry].

Dated: September 2, 2025
New York, NY

____***/s/_Nicole Lancia***_____

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DISTRICT COURT'S ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, DATED SEPTEMBER 2, 2025

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

v.

25 Civ. 5679 (KPF)

ORDER

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 August 14, 2025 telephonic conference, Plaintiff's motion for a preliminary injunction is DENIED.

SO ORDERED.

Dated: September 2, 2025
New York, New York

Katherine Polk Failla
KATHERINE POLK FAILLA
United States District Judge

PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF THEIR FIRST MOTION TO EXPEDITE BRIEFING, DATED SEPTEMBER 9, 2025

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

____x

OLIVER BRUCKAUF, as parent and Natural Guardian of E.B. and OLIVER BRUCKAUF, Individually, JANERIS RODRIGUEZ MEJIA, as Parent and Natural Guardian of E.R., and JANERIS RODRIGUEZ MEJIA, Individually; MAYTINEE BIRD, as Parent and Natural Guardian of H.C., and MAYTINEE BIRD, Individually; DONNA CORNETT, as Parent and Natural Guardian of J.B., and DONNA CORNETT, Individually; KAMOLPORN LUMMAYOS, as Parent and Natural Guardian of R.L., and KAMOLPORN LUMMAYOS, Individually; CLAUDIA RIVAS, as Parent and Natural Guardian of S.C., and CLAUDIA RIVAS, Individually; SANDRA LEE, as Parent and Natural Guardian of V.G., and SANDRA LEE, Individually; CRYSAL CROSLEY, as Parent and Natural Guardian of Z.C., and CRYSAL CROSLEY, Individually; MADELINE GRULLON, as Parent and Natural Guardian of C.B., and MADELINE

GRULLON, Individually; MARIA
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Guardian of L.S., and MARIA HIDALGO,
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as Parent and Natural Guardian of D.O.,
and ADEJUMOKE OGUNLEYE,
Individually; ROSA ELBA de PAULINO,
as Parent and Natural Guardian of R.P.,
and ROSA ELBA de PAULINO,
Individually; SHANTEL TALLEY, as
Parent and Natural Guardian of A.C.,
and SHANTEL TALLEY, Individually;
MARLENE VASQUEZ, as Parent and
Natural Guardian of L.C., and MARLENE
VASQUEZ, Individually; LINDA
LARACH-COHEN, as Parent and
Natural Guardian of M.C., and LINDA
LARACH-COHEN, Individually;
MARILYN BECKFORD, as Parent
and Natural Guardian of M.B., and
MARILYN BECKFORD, Individually;
PATRICK DONOHUE, as Parent and
Natural Guardian of S.J.D., and
PATRICK DONOHUE, Individually,

Plaintiffs-Appellants,

–against–

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.

____x

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PLAINTIFF'S MOTION TO EXPEDITE BRIEFING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

PRELIMINARY STATEMENT

Pursuant to Fed. R. App. P. 2 and 27, Local Rule 27.l(d), and 28 U.S.C. § 1657(a), Appellants Oliver Bruckauf, as Parent and Natural Guardian of E.B., and Oliver Bruckauf, Individually; Janeris Rodriguez Mejia, as Parent and Natural Guardian of E.R., and Janeris Rodriguez Mejia, Individually; Maytinee Bird, as Parent and Natural Guardian of H.C., and Maytinee Bird, Individually; Donna Cornett, as Parent and Natural Guardian of J.B., and Donna Cornett, Individually; Kamolporn Lummayos, as Parent and Natural Guardian of R.L., and Kamolporn Lummayos, Individually; Claudia Rivas, as Parent and Natural Guardian of S.C., and Claudia Rivas, Individually; Sandra Lee, as Parent and Natural Guardian of V.G., and Sandra Lee, Individually; Crysal Crosley, as Parent and Natural Guardian of Z.C., and Crysal Crosley, Individually; Madeline Grullon, as Parent and Natural Guardian of C.B., and Madeline Grullon, Individually; Maria Hidalgo, as Parent and Natural Guardian of L.S., and Maria Hidalgo, Individually; Adejumoke Ogunleye, as Parent and Natural Guardian of D.O., and Adejumoke Ogunleye, Individually; Rosa Elba de Paulino, as Parent and Natural Guardian of R.P., and Rosa Elba de Paulino, Individually; Martine Thomas and Scott Thomas, as Parents and Natural Guardians of A.T., and Martine Thomas and Scott Thomas, Individually; Shantel Talley, as Parent and Natural Guardian of A.C., and Shantel Talley, Individually; Marlene Vasquez, as Parent and Natural Guardian of L.C., and Marlene Vasquez, Individually; Linda Larach-Cohen, as Parent and Natural Guardian of

M.C., and Linda Larach-Cohen, Individually; Marilyn Beckford, as Parent and Natural Guardian of M.B., and Marilyn Beckford, Individually; Patrick Donohue, as Parent and Natural Guardian of S.J.D., and Patrick Donohue, Individually (collectively "Appellants"), respectfully submit this Memorandum of Law in support of their emergency motion to expedite their appeal from the District Court's Order denying their Motion for Preliminary Injunction.

Appellants notified counsel for Appellees of this Motion and the relief requested. Appellees object to the requested relief.

Appellants ask this Court to consider the instant appeal on an expedited basis because an expedited review of the grant or denial of a motion for preliminary injunction is appropriate. Expedited review also is warranted in the context of the underlying "stay-put" provision of the Individuals with Disabilities Education Act ("IDEA"), which provides, in relevant part: "[d]uring the pendency of any proceedings conducted pursuant to this section ... the child shall remain in the then-current educational placement of the child." 20 U.S.C. § 1415(j). This procedural right, especially as relevant here, a pendency determination in the first instance, acts as a statutory injunction without the requirement of showing the typical prerequisites of a preliminary injunction.

LEGAL STANDARD FOR EXPEDITED APPEAL

Consistent with this Court's emphasis on the expeditious resolution of appeals, Congress has allowed federal courts to expedite the consideration of an action for temporary or preliminary injunctive relief, or any other action if "good cause" is shown. 28 U.S.C. § 1657; Freedom Commc'ns Inc. v. FD.I.C., 157 F.R.D. 485, 486 (C.D. Cal. 1994) ("Under § 1657, the court has broad discretion in how to organize its docket. However, certain specific actions are named the highest priority civil actions—habeas corpus actions, recalcitrant witness actions, and actions for preliminary or temporary injunctive relief."); see also Am. All. Ins. Co. v. Eagle Ins. Co., 92 F.3d 57, 61 (2d Cir. 1996) ("[C]ourts have an interest in expediting litigation ...."); United States v. Delta, 925 F.2d 574, 575 (2d Cir. 1991) ("[W]e have an obligation to our Court, to the bar, to all litigants, and to the public to do what we can to administer our caseload expeditiously."); United States v. Raimondi, 760 F.2d 460, 461-62 (2d Cir. 1985) ("The prompt and orderly administration of justice has long been a subject of the most pressing concern for this Court."). As this matter involves the denial of a preliminary/automatic injunction, an expedited appeal is warranted.

RELEVANT FACTS

Appellants are the Parents of 18 students with disabilities and seek expedited review of the District Court's Order denying Plaintiff-Appellants' motion for preliminary injunction. Appellees' failure to fund each Student's placement, including tuition, related services, such as special transportation and nursing, where applicable, and related tuition late fees and late payment penalties related to transportation funding, has deprived each Appellant, and each Appellant's Student, of their right to pendency under the "stay-put" provision of the IDEA (20 U.S.C. § 1415(j)), and the regulations promulgated thereunder, and § 4404(4)(a) of the New York Education Law and the regulations promulgated thereunder.

On August 14, 2025, in an oral ruling, the District Court denied Parents' motion for preliminary injunction. The order was memorialized in a minute order on that date and subsequently in a written order on September 2, 2025. As evidenced in the transcript of the hearing on the motion for preliminary injunction on August 14, 2025, the District Court erroneously applied the traditional preliminary injunction standard, finding that Plaintiff-Appellants could not show irreparable harm. The District Court failed to consider their entitlement to a pendency determination under the "stay-put" provision of the IDEA, which acts as an automatic injunction without the need to show irreparable harm under the traditional test for a preliminary injunction, and, at any rate, establishes a fortiori such irreparable harm.

Appellants appealed that order on September 2, 2025. Appellants request that this Court expedite its review of this appeal.

FACTUAL AND PROCEDURAL HISTORY

Appellants seek expedited review of the District Court's Order denying Plaintiffs' motion for preliminary injunction. Appellees' failure to fund each Student's placement, including tuition, related services, such as special transportation and nursing, where applicable, and related tuition late fees and late payment penalties related to transportation funding, at iBRAIN has deprived each Appellant, and each Appellant's Student, of their right to pendency under the "stay-put" provision of the IDEA (20 U.S.C. § 1415(j)), and the regulations promulgated thereunder, and § 4404(4)(a) of the New York Education Law and the regulations promulgated thereunder.

In an oral ruling on August 14, 2025, the District Court denied the Parents' motion for preliminary injunction; that ruling was memorialized in a written order on September 2. On September 2, 2025, Plaintiff-Appellants filed a Notice of Appeal of the District Court's Order with this Court.

E.B.

On July 2, 2025, Plaintiff-Appellant Bruckauf brought a Due Process Complaint ("DPC") against DOE for the 2025-2026 SY. The DPC alleges, among other things, that the DOE did not provide E.B. a FAPE, iBRAIN was appropriate unilateral placement, and equities favored a request for direct payment of unilateral payment. U.S.C. §1415(i) et seq.; N.Y. Comp. Codes R. & Regs. tit. 8, § 200.5(i).

Plaintiff-Appellant Bruckauf requested DOE fully fund E.B.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition, transportation, and nursing, to maintain the status quo educational placement, through the "stay-put" proceedings commenced, which established E.B.'s Pendency throughout the administrative and judicial proceedings relative to Bruckauf's DPC for the 2025-2026 SY. The DPC was assigned IHO Case No. 296784.

E.R.

On July 3, 2025, Plaintiff-Appellant Mejia brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide E.R. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Mejia requested DOE fully fund E.R.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition, transportation and nursing. The DPC was assigned IHO Case No. 296787.

H.C.

On June 30, 2025, Plaintiff-Appellant Bird brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide H.C. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Bird requested DOE fully fund H.C.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition, transportation, and nursing. The DPC was assigned IHO Case No. 295762.

J.B.

On July 7, 2025, Plaintiff-Appellant Cornett brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide J.B. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Cornett requested DOE fully fund J.B.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned IHO Case No. 297039.

R.L.

On July 1, 2025, Plaintiff-Appellant Lummayos brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide R.L. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored a request for direct payment of the unilateral placement. Plaintiff-Appellant Lummayos requested DOE fully fund R.L.'s placement at iBRAIN, in accordance with the respective contracts for tuition, transportation, and nursing. The DPC was assigned IHO Case No. 296333.

S.C.

On July 1, 2025, Plaintiff-Appellant Rivas brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide S.C. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Rivas requested DOE fully fund S.C.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition, transportation, and nursing. The DPC was assigned IHO Case No. 295880.

V.G.

On July 3, 2025, Plaintiff-Appellant Lee brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide V.G. a FAPE for the 2025-2026 SY, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Lee requested DOE fully fund V.G.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned IHO Case No. 296857.

Z.C.

On July 7, 2025, Plaintiff-Appellant Crosley brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide Z.C. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Crosley requested DOE fully fund Z.C.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned an IHO Case No. 297177.

C.B.

On July 6, 2025, Plaintiff-Appellant Grullon brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide C.B. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Grullon requested DOE fully fund C.B.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned IHO Case No. 296999.

L.S.

On June 30, 2025, Plaintiff-Appellant Hidalgo brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide L.S. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Hidalgo requested DOE fully fund L.S.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition, transportation, and nursing. The DPC was assigned IHO Case No. 295779.

D.O.

On July 3, 2025, Plaintiff-Appellant Ogunleye brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide D.O. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Ogunleye requested DOE fully fund D.O.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned IHO Case No. 296850.

R.P.

On June 27, 2025, Plaintiff-Appellant de Paulino brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide R.P. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant de Paulino requested DOE fully fund R.P.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned IHO Case No. 295721.

A.T.

On June 27, 2025, Plaintiff-Appellants Martine Thomas and Scott Thomas (the "Thomas Plaintiffs") brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide A.T. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. The Thomas Plaintiffs requested DOE fully fund A.T.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned IHO Case No. 295725.

A.C-T.

On July 3, 2025, Plaintiff-Appellant Talley brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide A.C-T. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Talley requested DOE fully fund A.C-T.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition, transportation, and nursing. The DPC was assigned IHO Case No. 296926.

L.C.

On July 2, 2025, Plaintiff-Appellant Vasquez brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide L.C. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Vasquez requested DOE fully fund L.C.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned IHO Case No. 296729.

M.C.

On June 30, 2025, Plaintiff-Appellant Larach-Cohen brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide M.C. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Larach-Cohen requested DOE fully fund M.C.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition and transportation. The DPC was assigned IHO Case No. 295795.

M.B.

On July 3, 2025, Plaintiff-Appellant Beckford brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide M.B. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Beckford requested DOE fully fund M.B.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition, transportation and nursing. The DPC was assigned IHO Case No. 296879.

S.J.D.

On June 27, 2025, Plaintiff-Appellant Donohue brought a DPC against DOE for the 2025-2026 SY. The DPC alleges DOE did not provide S.J.D. a FAPE, iBRAIN was an appropriate unilateral placement, and equities favored direct payment of the unilateral placement. Plaintiff-Appellant Donohue requested DOE fully fund S.J.D.'s pendency placement at iBRAIN, in accordance with the respective contracts for tuition, transportation, and nursing. The DPC was assigned IHO Case No. 295723.

The District Court Action

On July 9, 2025, Parents filed their Complaint against DOE, alleging that DOE has failed to implement each of the Students' pendency placements by failing to fully fund each Student's placement at iBRAIN, including special transportation and nursing services, where applicable, as pendency, to maintain the Student's status quo educational placement, through the "stay-put" provision under 20 U.S.C. § 1415(j), because iBRAIN was the Pendency placement at the time the due process proceedings commenced, which established each Student's pendency throughout the administrative and judicial proceedings relative to each Plaintiff-Appellant's DPC for the 2025-2026 SY.

On July 15, 2025, Parents filed a motion for preliminary injunction. On August 14, 2025, in an oral ruling, the District Court denied Parents' motion for preliminary injunction. The order was memorialized in a minute order on that date and subsequently in a written order on September 2, 2025. The District Court found that Parents had not shown irreparable harm and thus were not entitled to injunctive relief. On August 29, 2025, Parents timely appealed the order and now seek expedited review by this Court.

THERE IS GOOD CAUSE FOR EXPEDITED RESOLUTION OF THIS APPEAL

DOE has failed to meet its burden to provide Students with an appropriate alternative pendency placement for the 2025-2026 school year. DOE has failed and continues to fail to both fund and comply with the "stay-put" provision under 20 U.S.C. § 1415(j), for each Student. In denying Parents' request for a preliminary/automatic injunction requiring DOE to abide by the terms of the IDEA's pendency provision, the District Court has all but sanctioned the contempt that DOE has shown for the pendency process itself. Without the requested relief, Students, in essence, are left without a pendency placement; a private placement without payment is no placement at all-financing goes hand in hand with the pendency placement. A student without a pendency placement is "an impossible result." Gabel ex rel. v. L.G., 358 F. Supp. 2d 313,325 (2d Cir. 2005).

The IDEA's "Pendency Provision," codified at 20 U.S.C. § 1415(j), functions as an automatic preliminary injunction without regard to factors such as irreparable harm or likelihood of success on the merits. Ventura de Paulino v. New York City Dep 't of Educ., 959 F.3d 519 (2d Cir. 2020), cert. denied, 141 S.Ct. 1075 (2021), reh'g denied, 141 S. Ct. 1530 (2021); Strother v. S. California Permanente Med. Grp., 79 F.3d 859 (9th Cir. 1996), as amended on denial of reh'g (Apr. 22, 1996), as amended on denial of reh'g (June 3, 1996); Casey K. ex rel. Norman K. v. St. Anne Cmty. High Sch. Dist. No. 302, 400 F.3d 508, 511 (7th Cir. 2005) (comparing a stay-put injunction to an automatic stay in a bankruptcy case); Wagner v. Bd. of Educ. Of Montgomery Cnty., 335 F.3d 297, 301 (4th Cir. 2003) (noting that an "injunction is automatic").

"Stay-put" interim relief requires that a school district keep funding a disabled student's then-current educational placement until the administrative and judicial proceedings are complete.[1] See Doe v. E. Lyme Bd. Of Educ., 790 F.3d

[1] "This provision aims to preserve public funding for an educational placement consented to by the parent before the parent requested a due process hearing. To cut off public funds

440,452 (2d Cir. 2015); T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 171 (2d Cir. 2014); E.Z.-L. ex rel. R.L. v. New York City Dep't of Educ., 763 F. Supp. 2d 584, 599 (S.D.N.Y. 2011), aff'd sub nom. R.E. v. New York City Dep't of Educ., 694 F.3d 167 (2d Cir. 2012). Under the IDEA, a claim for tuition funding under the stay-put provision is evaluated independently of the claim for tuition reimbursement due to the inadequacy of an IEP. Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 86 F. Supp. 2d 354, 357 (S.D.N.Y. 2000), aff'd, 297 F.3d 195 (2d Cir. 2002) (citing Zvi D. by Shirley D., 694 F.2d 904 ("[20 U.S.C. § 1415 (j) represents] Congress' policy choice that all handicapped children, regardless of whether their case is meritorious or not, are to remain in their current educational placement until the dispute concerning their placement is ultimately resolved.")); see also Mackey ex rel. Thomas M, 386 F.3d at 160-161 (citing Susquenita Sch. Dist. V. Raelee S. By & Through Heidi S., 96 F.3d 78, 83 (3d Cir. 1996)).

Under § 1415(j), there are only two ways that a pendency placement could be changed from the District's proposed school: by further agreement of the District and the parents or by a decision by an IHO or SRO. In Bd. of Educ. of Pawling Cent. Sch. Dist. v. Schutz, 290 F.3d 476, 484 (2d Cir. 2002), the Court held that "once the parents' challenge [to a proposed

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would amount to a unilateral change in placement, prohibited by the Act." Mackey ex rel. Thomas M., 386 F.3d at 163 (quoting Zvi D. by Shirley D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982) (internal quotation marks omitted).

IEP] succeeds... consent to the private placement is implied by law, and the requirements of § 1415(j) become the responsibility of the school district." See also Mackey ex rel. Thomas M, 386 F.3d at 163. If a placement is challenged and the state administrative bodies fail to render expeditious decisions about a child's educational placement, § 1415(e)(2) empowers the district court to assume jurisdiction over the review process and render a final determination. Frutiger v. Hamilton Cent. Sch. Dist., 928 F.2d 68, 73-74 (2d Cir. 1991).

Once the pendency placement is established, DOE is legally obligated to continue making payments to preserve the student's status quo educational placement. Doe v. Anrig, 561 Supp. 121, 130 (D. Mass. 1983), aff'd, 728 F.2d 30 (1st Cir. 1984), and aff'd in part, rev'd in part sub nom. Town of Burlington v. Dep't of Educ. for Com. Of Mass., 736 F.2d 773 (1st Cir. 1984), aff'd sub nom. Sch. Comm. of Town of Burlington, Mass v. Dep't of Educ. of Mass., 471 U.S. 359 (1985).

Section 1415(j) represents Congress' policy choice that all disabled children, regardless of whether or not their case is meritorious, are to remain in their current educational placement until the dispute about their placement is ultimately resolved. Zvi D. by Shirley D., 694 F.2d at 906; accord Mackey ex rel. Thomas M, 386 F.3d 158, 160-161 (2d Cir. 2004). The provision aims to provide a student with stability and consistency in their education while the proceedings occur. Honig v. Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988). However, if DOE's proposed placement is unavailable or DOE has failed to provide a Pendency placement, and the student has been unilaterally placed in a private school, issues arise as to who must pay for the placement. Zvi D. by Shirley D., 694 F.2d at 906. Under federal regulations, the student's current placement may be changed upon agreement between the parties and the local agency. 20 U.S.C. § 1415(j), (7); 34 C.F.R. §300.514(a).

For those students without an agreement, courts have found that the placement functioning at the moment the administrative proceedings began is the Student's Pendency Placement. Mackey v. Bd. of Educ., 2003 U.S. Dist. LEXIS 13712 at *35 (S.D.N.Y. 2003), citing Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 867 (3d Cir. 1996). Without an alternative appropriate pendency placement, Plaintiff-Students' operative placements at the time the DPCs were filed become their pendency placements. To maintain the status quo and to ensure Students remain in that private school placement during the pendency of the administrative and judicial proceedings relative to the DPCs, the DOE must fund the Students' placements in accordance with the Pendency Orders, and where a Pendency Order has not been issued, the uncontested pendency placements.

Plaintiff-Appellants are entitled to a determination of what constitutes pendency, not only in terms of determining the parameters of what is owed with or without a pendency order in place, but in those instances where DOE has continued to dispute certain payments. DOE moreover disputes owing late fees according to the relevant contracts, thus creating a de facto dispute on what constitutes pendency. This is particularly pronounced where the relevant pendency orders or final and binding administrative orders base reimbursement on the contracts or "costs" of the Parent throughout the 2025-26 school year. By delaying or denying payment altogether for the Students' Pendency placements, DOE is engaged in a de facto dispute of pendency.

The Third Circuit recognized that without pendency funding for a private placement, "a parent's 'choice' to have his child remain in what the state has determined to be an appropriate [] placement amounts to no choice at all." MR. v. Ridley Sch. Dist., 744 F.3d 112, 123 (3d Cir. 2014). There is no separate requirement of a court finding of appropriateness; rather, the obligation arises automatically from a determination that the private school is the protected status quo while the dispute resolution process is ongoing. Id. Here, the status quo for Students is the education and related services received at iBRAIN.

Therefore, as a result of DOE's failure to make any payment of payments for the constituent components of the relevant administrative orders for the Students, in combination with the District Court's refusal to consider these issues, Appellants were denied the "automatic injunction" guaranteed in § 1415(j). See Mendez, 65 F.4th at 62; see also Wagner, 335 F.3d at 301; see also Ventura de Paulino, 959 F.3d at 529 ("But where the IDEA's stay-put provision is implicated, the provision triggers the applicability of an automatic injunction designed to maintain the child's educational status quo while the parties' IEP dispute is being resolved."). Appellants are entitled to an immediate determination of what constitutes pendency.

As to the District Court's denial of Plaintiffs' Motion for a Preliminary Injunction, there is no guarantee that the school will continue to carry the Students in the future, or that the school can sustain itself without payment from the Parents or pendency payments from DOE. In the case of Blackman v. D.C., 277 F. Supp. 2d 71, 80 (D.D.C. 2003), the court found that "children cannot be denied of their substantive right to a free appropriate public education under the IDEA because they are fortunate enough to have parents who can afford to fund their education in private schools while waiting." Similarly, children cannot be denied their substantive right to a FAPE under the IDEA just because they are fortunate enough to have had their placements preserved at their private school . . . thus far.

Requiring the DOE to implement the pendency orders poses no harm to DOE, since the school system is obligated by law to provide Students with a FAPE, no matter in what arena. Even if the school system is forced to spend more money than originally planned, this minor harm must be "balanced against the emotional, psychological and physical" damage to this student, which is irreparable-whether it be the psychological toll exacted or dismissal from the school. L.J. By & Through Darr v. Massinga, 838 F.2d 118 (4th Cir. 1988), abrogated by Suter v. Artist M., 503 U.S. 347, 112 S. Ct. 1360, 118 L. Ed. 2d 1 (1992).

These crucial factors outweigh any expenditure of funds.

Lastly, while not addressed here, Appellants can and have met the traditional factors associated with a preliminary injunction.

CONCLUSION

Based on the foregoing, Plaintiff-Appellants request that this court grant them an expedited appeal and briefing schedule as follows:

Appellants' Brief: October 16, 2025

Defendants' Brief: November 20, 2025

Appellants' Reply Brief: December 4, 2025

Plaintiff-Appellants request this Court issue a Preliminary/Automatic Injunction under 20 U.S.C. § 1415(j) to implement the agreed pendency placements, to preserve and maintain Students' educational placements at their private school.

Dated: September 9, 2025
New York, NY

Respectfully Submitted,

/s/ Nicole Lancia
Nicole Lancia, Esq.

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RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO APPELLANTS' MOTION TO EXPEDITE BRIEFING, DATED SEPTEMBER 17, 2025

25-2127

United States Court of Appeals for
the Second Circuit

____________________________________x

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., CRYSAL CROSLEY, individually and as parent and natural guardian of Z.C., 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 and SCOTT THOMAS, individually and as parents and natural guardians of A.T., 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., and PATRICK DONOHUE, individually and as parent and natural guardian of S.J.D.,

Plaintiffs-Appellants,

against

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

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York

MEMORANDUM IN OPPOSITION TO MOTION TO EXPEDITE

DEVIN SLACK
AMY MCCAMPHILL
of Counsel

September 17, 2025

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

PRELIMINARY STATEMENT

This is one of a legion of cases with which Liberty & Freedom Legal Group—formerly Brain Injury Rights Group—has flooded this Court with intemperate demands regarding funding under the Individuals with Disabilities Education Act (IDEA) for students' tuition at iBrain, a private school for students with disabilities, and for associated transpor-tation and nursing services. This Court has recently denied nearly iden-tical motions filed by the same firm. This Court should also deny this motion, which is equally meritless.

If anything, this appeal is even more misguided than the prior ap-peals, because plaintiffs' claims are, without question, unripe and prem-ature. Indeed, plaintiffs filed this federal action on July 9, 2025, mere days after filing their administrative due process complaints regarding their children's schooling for the 2025-2026 school year—and then sought preliminary relief a week later, on July 15. Because their claims have yet to be resolved in the administrative proceeding, plaintiffs' federal action is nothing more than an attempt to improperly bypass that process. Plaintiffs' preliminary injunction motion, and now their appeal of the denial of that motion and motion to expedite that appeal, only further exemplifies plaintiffs' disregard for the well-established administrative process, and their continued desire to jump the line for IDEA funding. Plaintiffs' failure to exhaust administrative remedies dooms their federal action—along with their preliminary injunction motion, their appeal, and this motion to expedite.

Even putting aside these significant procedural hurdles, plain-tiffs' appeal is doomed on the merits, and thus there is no basis to expedite it. Plaintiffs seek, via a motion for preliminary injunction, immediate payment of tuition, nursing and transportation expenses for the 2025-2026 school years for eighteen students. Plaintiffs' effort cannot succeed, because a preliminary injunction is not available to resolve purely monetary disputes, which, by their nature, are not irreparable.

Indeed, plaintiffs' motion for immediate relief runs headlong into this Court's holding in Mendez v. Banks, 65 F.4th 56, 64 (2d Cir. 2023), where this Court affirmed that IDEA's pendency provision, also known as the "stay-put" provision, does not mandate an accelerated timeline for disbursement of public funds unless the child's placement is threat-ened. Here, plaintiffs have adduced no showing that any of the students' placement is threatened.

For all these reasons, this action, and this motion, are without merit. This Court should deny plaintiffs' motion to expedite.

BACKGROUND

The IDEA's "stay-put" or "pendency" provision provides that "dur-ing the pendency of any proceedings," children are entitled to "remain in [their] then-current educational placement" at public expense. 20 U.S.C. § 1415(j). "Then-current educational placement" means "the child's last agreed-upon educational program before the parent re-quested a due process hearing to challenge the child's [individual edu-cation plan]"—i.e., the start of the required administrative process. De Paulino v. N.Y.C. Dep't of Educ., 959 F.3d 519, 532 (2d Cir. 2020). Ab-sent an explicit agreement, the school district is deemed to agree to the placement if (a) the administrative review officers grant the placement and (b) the school district chooses not to appeal. Mendez, 65 F.4th at 59; De Paulino, 959 F.3d at 532. For students with pendency, this Court has recognized that the IDEA "does not create a procedural right to imme-diate payment, at least not absent a showing that a child's placement will be put at risk." Mendez, 65 F.4th at 64.

All plaintiffs prematurely rushed to district court before exhausting New York's two-step administrative process under the IDEA. See Mendez, 65 F.4th at 59 (explaining administrative process). Namely, plaintiffs commenced their administrative proceedings between June 27 and July 7, 2025, seeking DOE funding for the plaintiff students' attendance at iBrain for the 2025-26 school year (see Plaintiffs' Motion to Expedite Briefing ("Pls.' Mot.") 5-12), then filed this federal action only a few days later, on July 9, 2025 (SDNY Dkt. No. 1). Their operative complaint seeks a declaration that iBrain is the students' "pendency pro-gram/placement" for the 2025-26 school year, and an order that DOE "implement pendency funding for each student's educational program in the ordinary course of business, without undue delay, so as to prevent disruption in the provision of services to the students" (SDNY Dkt. No. 1 at 43-44 (capitalization removed)). A week later, on July 15, 2015, plaintiffs moved for preliminary injunctive relief (SDNY Dkt. No. 8). Following a telephone conference with the parties (SDNY Dkt. No. 16), the court denied the motion (SDNY Dkt. No. 20).

ARGUMENT

THIS COURT SHOULD DECLINE TO EXPEDITE THE APPEAL

This appeal concerns nothing but a demand for money from public coffers. It presents no need for expedition. Just as this Court has recently denied nearly identical motions from the same firm, it should likewise deny this motion.

At the outset, this Court should deny plaintiffs' attempt to fast-track this appeal because plaintiffs have not exhausted their administrative remedies. Plaintiffs assert that the federal courts can overtake the administrative process when "the state administrative bodies fail to ren-der expeditious decisions" (Pls.' Mot. 17), but that's not what happened here. Rather, plaintiffs rushed to federal court almost immediately after filing their administrative due process complaints. Plaintiffs did so despite the district court's admonishment to plaintiffs and their lawyers in prior cases that such claims are unripe when the administrative proceedings remain pending. See, e.g., Bruckauf v.

Banks, (LGS) 24-cv-05136 (Dkt. No. 91 at 9); see also Grullon v. Banks, (JGLC) 23-cv-05797 (Dkt. No. 30 at 7-11). Plaintiffs' motion for preliminary injunc-tive relief is premature, and plaintiffs' motion to expedite this appeal is particularly unwarranted.

Moreover, plaintiffs' motion for preliminary injunction is merit-less, which provides an additional reason why this Court should deny plaintiffs' motion to expedite their appeal. As a general rule, where only money is at stake, a preliminary injunction is simply not available. See, e.g., JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75, 79 (2d Cir. 1990). And that's all that this case is about. Any disputes purely about the amount or timing of payment are not emergencies.

When examined in the context of the IDEA, plaintiffs' preliminary injunction request is still baseless. As plaintiffs put it, "[o]nce … pen-dency placement is established, DOE is legally obligated to continue making payments to preserve the student's status quo educational placement" (Pl.'s Mot. 17). But plaintiffs have demonstrated neither that pendency is established for any of the students, nor that immediate pay-ment is required to preserve the status quo. On the first point, plaintiffs do not allege that any of their recently-filed administrative cases has even resulted in a pendency finding yet (see Pls.' Mot. 19 ("the obliga-tion arises … from a determination that the private school is the pro-tected status quo")). Plaintiffs also have adduced no showing—aside from vague, conclusory assertions about purported delays (Pls.' Mot. 19) that any tuition payments for the students' pendency placements are past due. Plaintiffs thus have no basis to claim that DOE has delayed payment at all.

On the second point, even once pendency is established—either by pendency order, or, under plaintiffs' alternate theory, by students' place-ment "at the moment" they filed their due process complaints (Pls.' Mot. 18)—plaintiffs are not automatically entitled to immediate funding. As this Court unambiguously held in Mendez (also litigated by plaintiffs' counsel's firm under its former name: Brain Injury Rights Group), the stay-put provision "does not create an entitlement to immediate pay-ment or reimbursement" unless plaintiffs prove that the delayed pay-ment "jeopardized the[] child's educational placement." 65 F.4th at 63. Plaintiffs have not made that showing. When, as here, there is no risk of students losing their current educational placement, "DOE is not obliged to circumvent its ordinary payment procedures" to expedite payment. Mendez, 65 F.4th at 63.

Halfheartedly, plaintiffs assert that "there is no guarantee that the school will continue to carry the students in the future" (Pls.' Mot. 20 (capitalization removed)), but it is plaintiffs' burden to show that the students' placements are jeopardized, and they have not submitted any record evidence to do so. Plaintiffs have not come close to clearing the high bar of showing irreparable harm. See Mendez, 65 F.4th at 62-64 (requiring plaintiffs to show irreparable harm for immediate relief).

Plaintiffs' final plea is that iBrain may not be able to "sustain it-self" without immediate payment (Pls.' Mot. 20). But this case was brought on behalf of students, not the school they attend; iBrain is not a plaintiff and cannot assert its own hardships by way of this type of lawsuit. In any event, plaintiffs have provided no details on iBrain's pur-ported financial hardships, much less any showing that immediate payment of the funding at issue in this appeal is somehow critical to the school's very existence.

Without any plausible argument for expediting this Court's con-sideration of the preliminary injunction motion, plaintiffs vaguely argue the merits of their underlying cases—namely, the funding that plaintiffs claim they are entitled to under the IDEA (see, e.g., Pls.' Mot. 14). Of course, these claims have yet to be resolved by an Impartial Hearing Of-ficer in plaintiffs' administrative appeal—much less a State Review Of-ficer, the second step in the administrative process. See Mendez, 65 F.4th at 59 (explaining administrative process). These claims also re-main pending before the district court. There is no good reason for this Court to fast-track these entirely unresolved issues by expediting this appeal, before any administrative record has been created or any administrative hearings have occurred.

Indeed, this Court recently denied almost identical motions to expedite almost identical appeals brought by the same law firm. Thomas v. Banks, 25-1451, ECF No. 12 (June 18, 2025); Ramos v. Banks, 25-1355, ECF No. 29 (June 12, 2025) (consolidated appeals). And a few years ago, this Court denied another similar motion from the same firm. Scheff v. Banks, 22-2439, ECF No. 25 (Oct. 26, 2022); ECF No. 76 (Jan. 10, 2023). There is no reason for this Court to do anything differently here.

* * *

In a throwaway line at the end of their motion papers, plaintiffs request that this Court issue a preliminary injunction (Pl.'s Mot. 21). This Court should decline to entertain this request, since plaintiffs did not inform the City that they would seek such relief, their motion information statement did not seek that relief, and their motion memorandum does not substantively address their entitlement to that relief.

On top of that, plaintiffs are simply not entitled to such relief, because they have made no showing of irreparable harm. This Court has already rejected plaintiffs' theory that IDEA's pendency provision, 20 U.S.C. § 1415(j), automatically entitles plaintiffs to purely monetary in-junctive relief, without any showing of irreparable harm. Mendez, 65 F.4th at 63-64.

CONCLUSION

This Court should deny the motion to expedite this appeal.

Dated: New York, New York
September 17, 2025

DEVIN SLACK

AMY MCCAMPHILL
of Counsel

PETITIONERS' REPLY TO APPELLEE'S OPPOSITION TO MOTION TO EXPEDITE BRIEFING, DATED SEPTEMBER 18, 2025

25-2127

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

OLIVER BRUCKAUF, AS PARENT AND NATURAL GUARDIAN OF E.B. AND OLIVER BRUCKAUF, INDIVIDUALLY, JANERIS RODRIGUEZ MEJIA, as Parent and Natural Guardian of E.R., and JANERIS RODRIGUEZ MEJIA, Individually; MAYTINEE BIRD, as Parent and Natural Guardian of H.C., and MAYTINEE BIRD, Individually; DONNA CORNETT, as Parent and Natural Guardian of J.B., and DONNA CORNETT, Individually; KAMOLPORN LUMMAYOS, as Parent and Natural Guardian of R.L., and KAMOLPORN LUMMAYOS, Individually; CLAUDIA RIVAS, as Parent and Natural Guardian of S.C., and CLAUDIA RIVAS, Individually; SANDRA LEE, as Parent and Natural Guardian of V.G., and SANDRA LEE, Individually; CRYSAL CROSLEY, as Parent and Natural Guardian of Z.C., and CRYSAL CROSLEY, Individually; MADELINE GRULLON, as Parent and Natural Guardian of C.B., and MADELINE GRULLON, Individually; MARIA HIDALGO, as Parent and Natural Guardian of L.S., and MARIA HIDALGO, Individually; ADEJUMOKE OGUNLEYE, as Parent and Natural Guardian of D.O., and ADEJUMOKE OGUNLEYE, Individually;

ROSA ELBA de PAULINO, as Parent and Natural Guardian of R.P., and ROSA ELBA de PAULINO, Individually; SHANTEL TALLEY, as Parent and Natural Guardian of A.C., and SHANTEL TALLEY, Individually; MARLENE VASQUEZ, as Parent and Natural Guardian of L.C., and MARLENE VASQUEZ, Individually; LINDA LARACH-COHEN, as Parent and Natural Guardian of M.C., and LINDA LARACH-COHEN, Individually; MARILYN BECKFORD, as Parent and Natural Guardian of M.B., and MARILYN BECKFORD, Individually; PATRICK DONOHUE, as Parent and Natural Guardian of S.J.D., and PATRICK DONOHUE, Individually,

Plaintiffs - 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.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO EXPEDITE BRIEFING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

PRELIMINARY STATEMENT

Defendants open their argument with a misstatement: "This appeal concerns nothing but a demand for money from public coffers." [Dkt.Entry 13.1 at 8]. This statement comes just a few lines after Defendants reference the operative complaint as seeking, inter alia, "a declaration that iBrain is the students' 'pendency program/placement' for the 2025-26 school year." [Id. at 7] (quoting ECF No. 1 at 43). Defendants double down on their misstatement later, arguing that a preliminary injunction is not available in cases involving only money. [Id. at 9]. This appeal is not a demand for money; it involves a claim for pendency rights established by the IDEA, including a declaration of the nature and scope of pendency which, under the "stay-put" provision of the IDEA, 20 U.S.C. § 1415(j), is supposed to be automatic.

ARGUMENT

Defendants argue, erroneously, that Plaintiffs failed to exhaust their administrative remedies. [Dkt.Entry 13.1 at 9]. Established law could not be more clear that exhaustion is not required in cases involving pendency. In Moonsammy v. Banks, No. 24 CIV. 2616 (PAE), 2024 WL 2831042, at *5 (S.D.N.Y. June 3, 2024), appeal withdrawn, No. 24-1814, 2024 WL 4527106 (2d Cir. Aug. 21, 2024), Judge Engelmayer wrote:

> In general, a parent is required as a "jurisdictional prerequisite" to exhaust all available state administrative remedies before filing an IDEA suit in federal court. Murphy v.

> Arlington Cent, Sch. Dist. Bd. of Educ., 297 F.3d 195, 199 (2d Cir. 2002). However, where an action, like this one, "alleges a violation of the stay-put provision, such action falls within one, if not more, of the enumerated exceptions to the IDEA's exhaustion requirement." Ventura de Paulino v. N.Y.C. Dep't of Educ., 959 F.3d 519, 530 (2d Cir. 2020) (cleaned up).

Defendants do not cite any new Second Circuit precedent (nor could they) that would reverse decades of case law reaffirming this commonsense principle relating to the "stay-put" provision. Federal court jurisdiction over pendency matters is concurrent with that of the administrative process, and Plaintiffs were well within their rights to file this action the instant Defendants disputed pendency. See Spilsbury v. D.C., 307 F. Supp. 2d 22, 23 n.1 (D.D.C. 2004).

Defendants follow up their arguments with more misstatements. They assert that "plaintiffs have demonstrated neither that pendency is established for any of the students, nor that immediate payment is required to preserve the status quo." [Dkt.Entry 13.1 at 10]. As to the first statement, Defendants argue that "plaintiffs do not allege that any of their recently-filed administrative cases has even resulted in a pendency finding yet." Id. This argument is specious. DOE's obligation to fund each Student's operative placement as pendency is not contingent on the outcome of subsequent administrative or judicial determinations regarding the precise scope or amount of payment. The automatic statutory injunction provided by the pendency provision attaches to the funding obligation once the protected status quo is determined. See M.R. v. Ridley Sch. Dist., 744 F.3d 112, 123-24 (3d Cir. 2014); Casey K. ex rel. Norman K. v. St. Anne Cmty. High Sch. Dist. No. 302, 400 F.3d 508, 511 (7th Cir. 2005). Here, there is no colorable dispute that the status quo for Students is the education and related services received at iBRAIN.

As to the second point, Defendants set up a straw-man argument, that Plaintiffs are seeking immediate payment, and then tear it down with Mendez v. Banks, 65 F.4th 56, 63 (2d Cir. 2023), which held that a parent cannot obtain an injunction for immediate payment unless they show that the placement is in jeopardy. [Dkt.Entry 13.1 at 10-11]. In fact, Plaintiffs seek an injunction declaring their entitlement to pendency and directing funding of that pendency. Mendez does not hold otherwise. Mendez held that plaintiff-parents cannot obtain "fast-track" pendency payments, when DOE does not otherwise dispute pendency, without showing that the students' placements are at risk. None of those conditions apply here.

Appellants are entitled to a determination of what constitutes pendency, not only in terms of determining the parameters of what is owed with or without a pendency order in place, but in those instances where DOE has continued to dispute certain payments. DOE disputes owing late fees according to the relevant contracts, thus creating a de facto dispute of what constitutes pendency. This is particularly pronounced where the relevant pendency orders or final and binding administrative orders base reimbursement on the contracts or "costs" of the Parent throughout the 2025-26 school year. By delaying or denying funding altogether for the Students' Pendency placements, DOE is engaged in a de facto dispute of pendency.

The Third Circuit has recognized that without pendency funding for a private placement, "a parent's 'choice' to have his child remain in what the state has determined to be an appropriate [] placement amounts to no choice at all." M.R., 744 F.3d at 123. There is no separate requirement of a court finding of appropriateness; rather, the obligation arises automatically from a determination that the private school is the protected status quo while the dispute resolution process is ongoing. Id. Here, the status quo for Students is the education and related services received at iBRAIN.

Therefore, as a result of DOE's failure to make any payment for the constituent components of the relevant administrative orders for the Students, in combination with the District Court's refusal to consider these issues, Appellants were denied the "automatic injunction" guaranteed in § 1415(j). See Mendez, 65 F.4th at 62; Ventura de Paulino v. New York City Dep 't of Educ., 959 F.3d 519, 529 (2d Cir. 2020), cert. denied, 141 S.Ct. 1075 (2021), reh'g denied, 141 S. Ct. 1530 (2021) ("But where the IDEA's stay-put provision is implicated, the provision triggers the applicability of an automatic injunction designed to maintain the child's educational status quo while the parties' IEP dispute is being resolved.").

Plaintiffs are entitled to an immediate determination of what constitutes pendency.

"Under [28 U.S.C.] § 1657, the court has broad discretion in how to organize its docket. However, certain specific actions are named the highest priority civil actions—habeas corpus actions, recalcitrant witness actions, and actions for preliminary or temporary injunctive relief." Freedom Commc'ns Inc. v. FD.I.C., 157 F.R.D. 485, 486 (C.D. Cal. 1994). As this appeal involves a claim "for preliminary or temporary injunctive relief," Plaintiffs are entitled to expedited review in this Court.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellants request that this Court expedite this appeal in accordance with the briefing schedule set forth in their Motion to Expedite Briefing [Dkt.Entry 9.2].

Dated: September 18, 2025 New York, NY

Respectfully Submitted,
/s/ Nicole Lancia
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CIRCUIT COURT'S ORDER DENYING PETITIONERS' MOTION TO EXPEDITE BRIEFING, DATED SEPTEMBER 22, 2025

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 22nd day of September, two thousand twenty-five.

Before: Sarah A. L. Merriam,
Circuit Judge.

Oliver Bruckauf, et al.,
Plaintiff - 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. 25-2127

Appellants move to expedite the appeal and for injunctive relief. IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

PETITIONERS' OPENING BRIEF, DATED DECEMBER 9, 2025

25-2127

United States Court of Appeals for the Second Circuit

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., CRYSAL CROSLEY, individually and as parent and natural guardian of Z.C., 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 and SCOTT THOMAS, individually and as parents and natural guardians of A.T., 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., and PATRICK DONOHUE, individually and as parent and natural guardian of S.J.D.,

Plaintiffs-Appellants,

–against–

MELISSA AVILES-RAMOS, IN HER OFFICIAL CAPACITY AS CHANCELLOR OF THE NEW YORK CITY DEPARTMENT OF EDUCATION, AND NEW YORK CITY DEPARTMENT OF EDUCATION

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

OPENING BRIEF FOR PLAINTIFF - APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases ***Pages***

Statutes

Other

JURISDICTIONAL STATEMENT

Basis for the District Court's Jurisdiction

The District Court had subject-matter jurisdiction over this action under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq*. Jurisdiction was also conferred on the District Court by 28 U.S.C. § 1331, because the cause of action arises under the laws of the United States.

Basis for this Court's Jurisdiction

This Court has jurisdiction over this appeal under 28 U.S.C. § 1291. The order on appeal is a final decision of the U.S. District Court for the Southern District of New York.

Timeliness of the Appeal

The Order appealed was entered on September 2, 2025 [A-104]. Under Fed. R. App. P. 4(a)(1)(A), Appellant's Notice of Appeal was due within 30 days, or no later than October 2, 2025. Appellant's Notice of Appeal was filed on September 2, 2025 [A-105]. Thus, this appeal is timely.

Assertion of this Court's Jurisdiction

The Order appealed is a final decision of the U.S. District Court. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred in denying Plaintiffs' request for an order declaring the scope of the Students' pendency and compelling DOE to fund their pendency placements, based on Plaintiffs' alleged failure to establish irreparable harm, despite Plaintiffs' entitlement to an automatic preliminary injunction under Section 1415(j) of the IDEA.

2. Whether the District Court erred in denying Plaintiffs' request for injunctive relief under Section 1415(j) of the IDEA based on Plaintiffs' alleged failure to show a likelihood of success on the merits, despite settled circuit precedent validating Plaintiff-Appellants' entitlement to the requested relief.

STATEMENT OF THE CASE

This is an appeal from the District Court's Order denying Plaintiffs' Motion for a Preliminary Injunction in Civil Case No. 25-cv-05679-KPF. Appellants Oliver Bruckauf, as Parent and Natural Guardian of E.B., and Oliver Bruckauf, Individually; Janeris Rodriguez Mejia, as Parent and Natural Guardian of E.R., and Janeris Rodriguez Mejia, Individually; Maytinee Bird, as Parent and Natural Guardian of H.C., and Maytinee Bird, Individually; Donna Cornett, as Parent and Natural Guardian of J.B., and Donna Cornett, Individually; Kamolporn

Lummayos, as Parent and Natural Guardian of R.L., and Kamolporn Lummayos, Individually; Claudia Rivas, as Parent and Natural Guardian of S.C., and Claudia Rivas, Individually; Sandra Lee, as Parent and Natural Guardian of V.G., and Sandra Lee, Individually; Crysal Crosley, as Parent and Natural Guardian of Z.C., and Crysal Crosley, Individually; Madeline Grullon, as Parent and Natural Guardian of C.B., and Madeline Grullon, Individually; Maria Hidalgo, as Parent and Natural Guardian of L.S., and Maria Hidalgo, Individually; Adejumoke Ogunleye, as Parent and Natural Guardian of D.O., and Adejumoke Ogunleye, Individually; Rosa Elba de Paulino, as Parent and Natural Guardian of R.P., and Rosa Elba de Paulino, Individually; Martine Thomas and Scott Thomas, Parents and Natural Guardians of A.T., and Martine Thomas and Scott Thomas, Individually; Shantel Talley, Parent and Natural Guardian of A.C., and Shantel Talley, Individually; Marlene Vasquez, Parent and Natural Guardian of L.C., and Marlene Vasquez, Individually; Linda Larach-Cohen, Parent and Natural Guardian of M.C., and Linda Larach-Cohen, Individually; Marilyn Beckford, Parent and Natural Guardian of M.B., and Marilyn Beckford, Individually; and Patrick Donohue, Parent and Natural Guardian of S.J.D., and Patrick Donohue, Individually (collectively, "Plaintiff-Appellants"), filed a Complaint on July 9, 2025, against Melissa Aviles-Ramos, in her Official Capacity as Chancellor of the New York City Department of Education, and the New York City Department of Education ("DOE") for violating the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq. [A-16]. Appellants sought enforcement of the Students' pendency rights under 20 U.S.C. § 1415(j).

Between June 27, 2025 and July 7, 2025, each Parent filed a DPC stating in pertinent part that: (1) DOE did not offer their respective child a FAPE for the 2025-2026 extended school; (2) each Parent's unilateral placement or continued placement of their respective Student at iBRAIN was appropriate; and (3) equitable considerations favored an award of full tuition payment directly to each Student's educational program/placement and their related service providers. In addition, each Parent's DPC requested an order requiring DOE to fund each Student's educational program/placement during the pendency of the due process proceedings relative to each Student's DPC for the 2025-2026 school year, as required by 20 U.S.C. § 1415(j).

In the DPCs, Parents' counsel sent DOE an email along with copies of all the documentation needed to determine each Student's pendency program/placement—copies of each Student's Ten-Day Notice, Pendency Implementation Form, the basis for pendency, a Proposed Order of Pendency, the iBRAIN enrollment contract, the Sister's Transportation Agreement, and their Nursing Service Agreement, where applicable. [ECF Nos. 1-1 through 1-19].

Each Parent received a favorable decision from an Impartial Hearing Officer ("IHO") or a State Review Officer ("SRO"), which held that DOE denied them a FAPE, determined that iBRAIN was an appropriate placement, and found that equitable considerations favored total funding or reimbursement.

The District Court Proceedings

On July 9, 2025, Appellants filed a Complaint in the District Court. [A-17]. Appellants sought enforcement of Students' pendency rights under 20 U.S.C. § 1415(j), 42 U.S.C. §1983, and N.Y. Comp. Codes R. & Regs. tit. 8, § 200.5(j)(5). [A-17 at ¶¶ 268-299]. Appellants alleged that DOE failed to adequately fund Students' pendency placements by inconsistently applying payments and jeopardizing their placement. [*Id.*] Appellants requested as relief a declaration from the District Court that pendency lies at the International Institute for the Brain ("iBRAIN"), including full funding for tuition at iBRAIN, along with all related services, including but not limited to transportation and nursing, where appropriate, during the 2025-26 school year. [A-60, 61].

Plaintiffs filed a Proposed Order to Show Cause for a Temporary Restraining Order and/or Preliminary Injunction on July 15, 2025 [ECF No. 8-1], and a Memorandum of Law in Support on the same date [ECF No. 8]. The District Court held a hearing on the Motion on August 14, 2025, and denied the Motion in open court. [A-63, 96].

The Court entered its Order on September 2, 2025. [A-104]. The District Court found, *inter alia*, that Plaintiffs had not established irreparable harm, and denied Plaintiffs' Motion [A-63, 96]. On that same day, September 2, 2025, Plaintiffs filed a timely Notice of Interlocutory Appeal. [A-105].

STATEMENT OF FACTS

Between June 27, 2025 and July 7, 2025, each Parent filed a DPC stating in pertinent part that: (1) DOE did not offer their respective child a FAPE for the 2025-2026 extended school; (2) each Parent's unilateral placement or continued placement of their respective Student at iBRAIN was appropriate; and (3) equitable considerations favored an award of full tuition payment directly to each Student’s educational program/placement and their related service providers. In addition, each Parent’s DPC requested an order requiring DOE to fund each Student’s educational program/placement during the pendency of the due process proceedings relative to each Student’s DPC for the 2025-2026 school year, as required by 20 U.S.C. § 1415(j). [ECF Nos. 1-1 through 1-18]. In each DPC, the Parents attached each Student’s Ten-Day Notice, Pendency Implementation Form, the basis for pendency, a Proposed Order on Pendency, and the agreements for tuition, transportation, and nursing services, where applicable. [*Id*]. Each Parent received a favorable decision from an administrative officer, which held that DOE denied the Student a FAPE, determined that iBRAIN was an appropriate placement, and found that equitable considerations favored total funding or reimbursement, as follows. [*Id.*]

E.B.

As of the date of the filing of the DPC, the last unappealed administrative order was SRO Decision 23-238, issued on December 1, 2023. SRO Decision No. 23-238 found that DOE failed to offer a FAPE for the 2023-2024 school year and iBRAIN was an appropriate unilateral placement and ordered "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." SRO Decision 23-238 establishes E.B.'s pendency for the 2025-2026 school year.

To date, no pendency payments have been made. In its recent filing regarding the status of pendency, DOE stated, "There have been no orders in connection with the DPC." [ECF No. 39-1 at ¶ 12].

E.R.

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 251092, issued on November 18, 2023, in which the IHO found that DOE failed to offer a FAPE for the 2023-2024 school year, that unilateral placement at iBRAIN was appropriate and that "…the equities support the Parent's claim for the cost of tuition and transportation and order the District to fully fund the Student's tuition and transportation for the 2023/24 school year." The FOFD was unappealed and establishes E.R.'s pendency at iBRAIN for the 2025-2026 school year.

In the underlying administrative matter, the IHO issued a pendency order on September 12, 2025, requiring DOE to fund tuition and transportation. [ECF No. 39-1 at ⁋ 13]. The IHO in the underlying matter issued an FOFD on October 24, 2025, which the Parent appealed. [*Id.*]. DOE stated that based on the Parent's appeal, "thus continuing pendency" and payments "have been processed" for transportation and tuition for E.R.'s pendency placement. [*Id.*].

H.C.

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 228745, issued on September 20, 2022. In the FOFD, the IHO found that DOE had denied FAPE, that iBRAIN was an appropriate placement and that DOE should directly pay tuition, transportation, and nursing services for the school year. The unappealed FOFD establishes H.C.'s pendency at iBRAIN for the 2025-2026 school year.

In the underlying administrative matter, on October 17, 2025, the IHO in the underlying matter issued an FOFD which ordered DOE to pay the pendency placement: "(1) tuition at iBrain up to a total amount of $331,047.80; (2) transportation from the closest safe curb location to the school; and (3) 1:1 nursing services including a 1:1 transportation nurse between Student's home and the Private School and a 1:1 nurse during school hours." [ECF No. 39-1 at ⁋ 14]. The Parent appealed the FOFD including portions of the pendency ordered. [*Id.*]. DOE has taken the position that "[n]o pendency payments have been made due to the Parent's appeal of the pendency order. . . Once the issues on appeal are known, DOE will implement the portion of pendency not under appeal." [*Id.*].

J.B.

As of the date of the filing of the DPC, the last unappealed administrative order was SRO Decision 23-235, issued on January 10, 2024. SRO Decision No. 23-235 found that DOE failed to offer a FAPE for 2023-2024 school year, that unilateral placement at iBRAIN was appropriate and that "…the equities support Parent's claim for direct funding." The SRO "modified" the FOFD "to reflect the categories of tuition owed pursuant to the parents' contract with iBRAIN." Thus, SRO Decision No. 23-235 establishes iBRAIN and the attendant related services "pursuant to the parents' contracts" as J.B.'s "current educational placement." This unappealed SRO decision establishes J.B.'s pendency at iBRAIN for the 2025-2026 school year.

In the underlying administrative matter, DOE has taken the position that no pendency is owed because no pendency order has been issued in the underlying administrative case. [ECF No. 39-1 at ⁋ 15]. The IHO's FOFD, dated October 17, 2025, did not include an order on pendency and was appealed by the Parent. [*Id*.]. DOE states that it "will implement pendency as ordered by the SRO." [*Id*.].

R.L.

As of the date of the filing of the DPC, the last unappealed administrative order was SRO Decision 23-271, issued on January 4, 2024. SRO Decision No. 23-271 found that DOE failed to offer a FAPE for 2023-2024 school year and that unilateral placement at iBRAIN was appropriate and ordered DOE to directly pay for the tuition and transportation to the providers for the placement pursuant to the terms of the contracts. This unappealed SRO decision establishes R.L.'s pendency at iBRAIN for the 2025-2026 school year.

To date, no pendency payments have been made. In its recent filing regarding the status of pendency, DOE stated, "There have been no orders in connection with the DPC." [ECF No. 39-1 at ⁋ 20].

S.C.

As of the date of the filing of the DPC, the last unappealed administrative order was SRO Decision 24-058, issued on April 18, 2024. SRO Decision No. 24-058 found that DOE failed to offer a FAPE for 2023-2024 school year and that unilateral placement at iBRAIN was appropriate and ordered DOE to directly pay for the tuition, transportation, and nursing services to the providers for the placement pursuant to the terms of the contracts. This unappealed SRO decision establishes S.C.'s pendency at iBRAIN for the 2025-2026 school year.

In the underlying administrative case, a pendency order was entered on September 8, 2025. [ECF No. 39-1 at ⁋ 22]. DOE has stated, "[p]ursuant to this pendency order, DOE ***has processed***…" pendency payments for tuition, transportation, and nursing. [*Id.*]

V.G,

As of the date of the filing of the DPC, SRO Decision No. 22-165, issued on March 1, 2023, continues to be the last unappealed administrative order. SRO Decision No. 22-165 affirmed the IHO FOFD that DOE failed to offer FAPE and ordered DOE to directly pay for the costs of attendance at iBRAIN and specialized transportation. SRO Decision No. 22-165 establishes V.G.'s pendency at iBRAIN for the 2025-2026 school year.

To date, no pendency payments have been made. In the underlying administrative matter, a Pendency Order was issued on October 16, 2025, ordering pendency consistent with the prior, unappealed SRO decision. [ECF No. 39-1 at ⁋ 24]. DOE has appealed the order. [*Id.*]. DOE has taken the position that "[o]nce the extent of the pendency issues on appeal are known, DOE will implement the portions of pendency that are not under appeal, if any." [*Id.*].

Z.C.

On June 27, 2025, the IHO in IHO Case No. 277285 for the 2024-2025 school year issued an FOFD. In that FOFD, the IHO found pendency for the 2024-2025 school year was based on the unappealed FOFD in IHO Case No. 250764 for the 2023-2024 school year. Since the filing of the Complaint, the FOFD in IHO Case No. 277285 has been appealed by DOE. Accordingly, the FOFD issued in IHO Case No. 277285 remains the last unappealed administrative order, which ordered DOE to pay tuition and transportation costs for the unilateral placement at iBRAIN. The unappealed FOFD establishes Z.C.'s pendency at iBRAIN for the 2025-2026 school year.

To date, no pendency payments have been made. In the underlying administrative matter, the IHO issued a FOFD on October 27, 2025, which included an order on pendency. [ECF No. 39-1 at ⁋ 25]. Parent appealed the FOFD, including portions of the findings on pendency. [*Id.*]. DOE has taken the position that "[o]nce the extent of the pendency issues on appeal are known, DOE will implement the portions of pendency that are not under appeal, if any." [*Id.*].

C.B.

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 277158, issued on September 9, 2024.

In the FOFD, the IHO found that DOE had denied FAPE and that iBRAIN was an appropriate placement and ordered DOE to directly pay tuition and contracted transportation services for the 2024-2025 school year. The unappealed FOFD establishes C.B.'s pendency at iBRAIN for the 2025-2026 school year.

The IHO issued a pendency order in the underlying administrative matter on August 19, 2025, ordering payment of tuition and special transportation. [ECF No. 39-1 at ⁋ 10]. DOE admitted that it did not pay for the transportation portion of pendency, rather it offered to provide its own transportation. [*Id.*]. DOE has made partial payments towards tuition.

L.S.

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 251061, issued on September 15, 2023. In the FOFD, the IHO found that DOE had denied FAPE and that iBRAIN was an appropriate placement and ordered DOE to directly pay tuition, transportation, and nursing services for the school year pursuant to the terms of the contracts between the Plaintiff and the providers. The unappealed FOFD establishes L.S.'s pendency at iBRAIN for the 2025-2026 school year.

A pendency order was issued in the underlying administrative case on September 1, 2025. [ECF No. 39-1 at ⁋ 17]. The parties cross-appealed the pendency order, and DOE has made no pendency payments to date. [*Id.*].

D.O.

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 251168, issued on December 5, 2022. In the FOFD, the IHO found that DOE had denied FAPE, that iBRAIN was an appropriate placement and that DOE should directly pay tuition and transportation, for the school year pursuant to the terms of the contracts between the Plaintiff and the providers. The unappealed FOFD establishes D.O.'s pendency at iBRAIN for the 2025-2026 school year.

The IHO issued a pendency order on August 11, 2025, ordering payment of tuition and special transportation. [ECF No. 39-1 at ¶ 11]. DOE admitted that it did not pay for the transportation portion of pendency, rather it offered to provide its own transportation. [*Id.*]. DOE stated that the Parent appealed the IHO's FOFD "thus continuing pendency, $115,020 has been processed towards D.O.'s pendency tuition." [*Id.*].

R.P.

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 228467, issued on March 13, 2023. In the FOFD, the IHO found that DOE had denied FAPE, that iBRAIN was an appropriate placement and ordered DOE to directly pay tuition and transportation services for the school year. The unappealed FOFD establishes R.P.'s pendency at iBRAIN for the 2025-2026 school year.

Still, no pendency payments have been made. In its recent filing regarding the status of pendency and its refusal to issue payments, DOE stated, "There have been no orders in connection with the DPC." [ECF No. 39-1 at ⁋ 21].

A.T.

As of the date of the filing of the DPC, SRO Decision No. 24-624, issued on April 9, 2025, is the last unappealed administrative order. SRO Decision No. 24-624 found that DOE failed to offer FAPE and that iBRAIN was the appropriate placement and ordered DOE to directly pay for the costs of tuition and specialized transportation. SRO Decision No. 24-624 establishes A.T.'s pendency at iBRAIN for the 2025-2026 school year.

To date, only partial pendency payments have been authorized. On August 29, 2025, the IHO ordered DOE to pay pendency pursuant to a prior unappealed FOFD. [*Id.*]. DOE admits that it did not appeal the pendency order. [*Id.*]. Notwithstanding, DOE only indicated as of November 24, 2025, that it would "reinstate" pendency and issue payment in the normal course because "neither party has raised any pendency appeal." [*Id.*]. Thus, as DOE admitted, it did not pay any pendency as of November 24, 2025. [ECF No. 39-1 at ⁋ 9].

<u>A.C.</u>

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 277096, issued on August 28, 2024. In the FOFD, the IHO found that DOE had denied FAPE and that iBRAIN was an appropriate placement and ordered DOE to directly pay tuition, transportation costs and nursing services for the school year pursuant to the terms of the contracts between the Plaintiff and the providers. The unappealed FOFD establishes A.C.'s pendency at iBRAIN for the 2025-2026 school year.

To date, no pendency payments have been made. DOE has admitted that it took no action to process the pendency payments until after a Pendency Order was entered by the IHO on October 6, 2025. [ECF No. 39-1 at ⁋ 7]. The IHO required Parent to provide additional attendance information, which was provided. [*Id.*]. As of November 24, 2025, DOE still had not processed the pendency payments but will review the information "to ensure it meets the requirements of the pendency order" before it will process payments. [*Id.* at ⁋ 8].

<u>L.C.</u>

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 277155, issued on October 9, 2024. In the FOFD, the IHO found that DOE had denied FAPE and that iBRAIN was an appropriate placement and ordered DOE to directly pay tuition and transportation services for the 2024-2025 school year. The unappealed FOFD establishes L.C.'s pendency at iBRAIN for the 2025-2026 school year. As of the filing of this brief, partial pendency payments have been made.

In the underlying administrative case, a Pendency Order was entered on August 13, 2025. [ECF No. 39-1 at ¶ 16]. DOE did not appeal the order. [*Id.*]. DOE appealed the IHO's FOFD on November 5, 2025, "thus continuing pendency" and payments towards pendency for tuition and transportation "have been processed." [*Id.*].

M.C.

As of the date of the filing of the DPC, SRO Decision No. 23-262, issued on January 12, 2024, is the last unappealed administrative order. SRO Decision No. 23-262 found that DOE failed to offer FAPE and that iBRAIN was the appropriate placement and ordered DOE to directly pay for the costs of tuition and specialized transportation. SRO Decision No. 23-262 establishes M.C.'s pendency at iBRAIN for the 2025-2026 school year.

In the underlying administrative case, the IHO issued a pendency order and FOFD on September 12, 2025. [ECF No. 39-1 at ¶ 19]. DOE appealed the portion of the pendency order requiring DOE to fund the privately contracted transportation. [*Id.*]. As of the November 24, 2025 declaration, DOE indicated that "because pendency tuition is not contested, [DOE's implementation unit] ***will implement same in the normal course."*** [*Id.*]. Accordingly, as of the filing, DOE has admitted that it had not implemented uncontested tuition pendency. [*Id.*].

M.B.

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in IHO Case No. 277132, issued on October 14, 2024. In the FOFD, the IHO found that DOE had denied FAPE and that iBRAIN was an appropriate placement and ordered DOE to directly pay tuition, transportation services, and nursing services for the 2024-2025 school year pursuant to the terms of the contracts between the Plaintiff and the providers. The unappealed FOFD establishes M.B.'s pendency at iBRAIN for the 2025-2026 school year.

In the underlying administrative matter, the IHO issued a Pendency Order on August 25, 2025, consistent with the October 14, 2024, unappealed FOFD. [ECF No. 39-1 at ⁋ 18]. The IHO issued a FOFD on October 1, 2025, which the Parent appealed, which DOE described as "thus reinstating pendency." [*Id.*]. DOE stated that it "has paid" pendency tuition and transportation. [*Id.*].

S.J.D.

As of the date of the filing of the DPC, the last unappealed administrative order was the FOFD in

IHO Case No. 277140, issued on December 13, 2024. In the FOFD, the IHO found that DOE had denied FAPE and that iBRAIN was an appropriate placement and ordered DOE to directly pay tuition, transportation services, and nursing services for the 2024-2025 school year. The unappealed FOFD establishes S.J.D.'s pendency at iBRAIN for the 2025-2026 school year.

In the underlying administrative matter, the IHO issued a pendency order on August 13, 2025. [ECF No. 39-1 at ⁋ 23]. According to DOE, it "has processed" the pendency program identified in the prior, unappealed IHO FOFD. [*Id.*].

Here, each Student was re-enrolled at iBRAIN for the 2025-2026 school year as iBRAIN is each Parent's last agreed-upon educational placement—and each Student's then-current educational placement when their DPC was filed. "When the City consents in the prior administrative proceeding to the students' private placement at a particular school, 'at that moment, the City assumed the legal responsibility to pay for [that school's] educational services to the Students as the agreed-upon educational program that must be provided and funded during the pendency of any IEP dispute.'" *Crespo v. Aviles-Ramos*, 2025 U.S. Dist. LEXIS 213720, *15-16 (S.D.N.Y. Oct. 29, 2025), citing *De Paulino v. N.Y.C. Dep't of Educ.*, 959 F.3d 519, 532 (2d Cir. 2020), *cert. denied*, 141 S.Ct. 1075 (2021), *reh'g denied*, 141 S. Ct. 1530 (2021) (emphasis added). The filing of each Parent's DPC triggered DOE's obligation to fund each Student's pendency placement from that date forward. See *E.Z.-L. ex rel. R.L. v. New*

York City Dep't of Educ., 763 F. Supp. 2d 584, 599 (S.D.N.Y. 2011), *aff'd sub nom. R.E. v. New York City Dep't of Educ.*, 694 F.3d 167 (2d Cir. 2012) ("If the student's current educational placement is in private school, the responsibility for private school tuition 'stays put' as well. Thus, where, as here, the school district has been paying for a child's private school tuition, it must continue to do so until the moment when the child's educational placement changes.") (internal citations and quotation marks omitted).

In sum, at this time, DOE has not implemented pendency for ten Students. In the months since this appeal was filed, DOE has agreed to implement pendency placement in some form for eight Students, ***only after*** pendency orders were entered in the underlying administrative proceedings, months after the DPCs were filed, and funded portions of pendency for only six Students. [ECF No. 39-1]. DOE has refused to implement pendency, despite prior unappealed administrative orders for three students, because no order has been issued in the underlying administrative proceedings on pendency. [*Id.*].

The District Court Action

On July 9, 2025, the Parents filed a Complaint against DOE, alleging that DOE has failed to implement each of the Students' pendency placements, in violation of the binding administrative orders for each of these Students. To date, DOE has failed or refused to fully fund each Student's pendency placement at iBRAIN, including tuition, tuition late fees, related services, nursing services (where applicable), and transportation services, including accrued late payment penalties.

On August 14, 2025, the District Court heard arguments on Parents' Motion for Preliminary Injunction and denied the relief, because the Parents had not shown irreparable harm or likelihood of success on the merits, and thus were not entitled to injunctive relief. On September 2, 2025, the District Court entered an Order denying Parents' motion for preliminary injunction for the reasons stated at the hearing. Parents timely appealed the same day and now seek review by this Court.

SUMMARY OF THE ARGUMENT

Appellants are the Parents of 18 students with disabilities and seek expedited review of the District Court's Order denying Plaintiff-Appellants' motion for preliminary injunction. Appellees' failure to fund each Student's placement, including tuition, related services, such as special transportation and nursing, where applicable, and related tuition late fees and late payment penalties related to transportation funding, has deprived each Appellant, and each Appellant's Student, of their right to pendency under the "stay-put" provision of the IDEA (20 U.S.C. § 1415(j)), and the regulations promulgated thereunder, and § 4404(4)(a) of the New York

Education Law and the regulations promulgated thereunder.

As evidenced in the transcript of the hearing on the motion for preliminary injunction on August 14, 2025, the District Court erroneously applied the traditional preliminary injunction standard, finding that Plaintiff-Appellants could not show irreparable harm. The District Court failed to consider their entitlement to a pendency determination under the "stay-put" provision of the IDEA, which acts as an automatic injunction without the need to show irreparable harm under the traditional test for a preliminary injunction, and, at any rate, establishes *a fortiori* such irreparable harm. This Court in *Mendez v. Banks*, 65 F.4th 56 (2d Cir. 2023), and courts since *Mendez* have recognized a plaintiff is entitled to an automatic preliminary injunction as to pendency, without regard to irreparable harm. That question does not implicate a request for immediate payment or the timeframe in which DOE must fund pendency, only a determination on what services constitute pendency and must be funded by DOE in the ordinary course.

In that regard, the District Court erroneously found that the Parents' claim was for immediate payment of pendency and could not be sustained because they had not shown irreparable harm. However, a showing of irreparable harm was not required. As the District Court itself recognized, Plaintiffs' Motion for preliminary injunctive relief sought an order declaring iBRAIN as the Students' proper pendency placement with private transportation and nursing services, where applicable. Thus, Plaintiffs were entitled to an order declaring the scope of the Students' pendency where, as here, DOE disputes its pendency obligations. Because funding goes hand in hand with pendency placement, Plaintiff-Appellants were also entitled to an order requiring DOE to fund the Students' pendency placements, without regard to the traditional preliminary injunction factors because the IDEA creates an automatic preliminary injunction for pendency

STANDARD OF REVIEW

This Court reviews the District Court's factual findings under the "clearly erroneous" standard and reviews its legal conclusions *de novo*. *Muller on Behalf of Muller v. Comm. on Special Educ. of E. Islip Union Free Sch. Dist.*, 145 F.3d 95, 102 (2d Cir. 1998).

Under Fed. R. Civ. P. 65(a), a plaintiff seeking a preliminary injunction must generally prove the following elements: "(1) irreparable harm; (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of [his] claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party; and (3) that a preliminary injunction is in the public interest." *Ali v. Wuchte*, 2022 WL 3682303, at *1 (E.D.N.Y. Aug. 25, 2022); *see Conn. State Police Union v. Rovella*, 36 F.4th 54, 62 (2d Cir. 2022) (internal quotation marks omitted).

However, traditional preliminary injunction standards do not apply to the enforcement of pendency and pendency obligations under the IDEA. *Cronin v. Bd. of Educ. of E. Ramapo Cent. Sch. Dist.*, 689 F. Supp. 197, 202 (S.D.N.Y. 1988) (*citing Cochran v. D.C.*, 660 F. Supp. 314, 319 (D.D.C. 1987)). As this Court has explained, the stay-put provision serves as an operative mechanism, which "is, in effect, an automatic preliminary injunction." *Zvi D. by Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982). Nor do the traditional preliminary injunction factors apply to pendency payments made in the ordinary course, as "funding goes hand-in-hand with placement." *Mendez*, 65 F.4th at 62.

ARGUMENT

I. IDEA FRAMEWORK

Congress enacted the IDEA "to assure that all children with disabilities have available to them … a free appropriate public education which emphasizes special education and related services designed to meet their unique needs." *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 197 (2d Cir. 2002), *aff'd,* 297 F.3d 195 (2d Cir. 2002) (quoting *Cedar Rapids Cmty. Sch. Dist. v. Garret F. ex rel. Charlene F.*, 526 U.S. 66, 68 (1999)). Children are entitled to "an education 'likely to produce progress, not regression,' and one that 'afford[s] the student with an opportunity greater than mere trivial advancement.'" *T.K. v. New York City Dep't of Educ.*, 810 F.3d 869, 875 (2d Cir. 2016) (quoting *M.O. v. New York City Dep't of Educ.*, 793 F.3d 236, 239 (2d Cir. 2015)); *accord Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE1*, 580 U.S. 386 (2017) ("[A] student offered an educational program providing 'merely more than *de minimis* progress from year to year can hardly be said to have been offered an education at all.'").

"The 'centerpiece' of the IDEA and its principal mechanism for achieving this goal is the IEP," *i.e.*, Individualized Education Program. *T.K.*, 810 F.3d at 875. "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Endrew F. ex rel. Joseph F.*, 580 U.S. at 386 (quoting *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 181 (1982)). "Where the IEP is substantively deficient, parents may unilaterally reject it in favor of sending their child to private school and seek tuition reimbursement from the State." *T.K.*, 810 F.3d at 875. To challenge an IEP, a parent must first file a "due process complaint" detailing the alleged deficiencies of the IEP. *C.F. ex rel. R.F. v. New York City Dep't of Educ.*, 746 F.3d 68, 73 (2d Cir. 2014) (citing 20 U.S.C. § 1415(b)(7)(A), (f)(1)). Following a 30-day resolution period, the parent and school district will participate in an "impartial due process hearing" before an Impartial Hearing Officer ("IHO"). *Id.* Under New York law, once the IHO renders a decision, any party aggrieved by the decision may request a review by a state review officer ("SRO"), who can affirm or modify the IHO's

Order. *Id*. (citing N.Y. Educ. Law § 4404(1)-(2)). After that, "[e]ither party may bring a civil action before a federal or state court to review the SRO's decision." 20 U.S.C. § 1415(i)(2)(A)).

During the pendency of judicial proceedings, the IDEA's "pendency provision" also known as the "stay put provision," codified at 20 U.S.C. § 1415(j), "entitles a disabled child to 'remain in his then-current educational placement.'" *T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist*., 752 F.3d 145, 152 (2d Cir. 2014) (quoting 20 U.S.C. § 1415(j)). The core concern of the IDEA is to provide a continuous, uninterrupted education to disabled children; accordingly, the pendency provision "maintain[s] the educational *status quo*" of the child and ensures continuity of services while the parties' dispute is being resolved. *See id*. (citing *Mackey ex rel. Thomas M. v. Bd. of Educ. For Arlington Cent. Sch. Dist*., 386 F.3d 158, 160–61 (2d Cir. 2004), *supplemented sub nom. Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist*., 112 F. App'x 89 (2d Cir. 2004). "Stay-put" interim relief requires that a school district keep funding a disabled student's then-current educational placement until the administrative and judicial proceedings are complete. *See Doe v. E. Lyme Bd. Of Educ.,* 790 F.3d 440, 452 (2d Cir. 2015); *T.M. ex rel. A.M.,* 752 F.3d at 171; *E.Z.-L. ex rel. R.L.,* 763 F. Supp. 2d at 599. The pendency provision, therefore, "aims to preserve public funding for an educational placement 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, prohibited by the Act." *Mackey ex rel.*

Thomas M., 386 F.3d at 163 *(quoting Zvi D. by Shirley D.,* 694 F.2d at 906).

Under the IDEA, a claim for tuition funding under the stay-put provision is evaluated independently of the claim for tuition reimbursement due to the inadequacy of an IEP. *Murphy,* 86 F. Supp. 2d at 357 (S.D.N.Y. 2000); *see also Mackey ex rel. Thomas M.,* 386 F.3d at 160-161 (citing *Susquenita Sch. Dist .v. Raelee S. By & Through Heidi* S., 96 F.3d 78, 83 (3d Cir. 1996)). "There is no separate requirement that a court determines the placement is appropriate; rather, the obligation arises automatically from a determination that the private school is the protected status quo during the period in which the dispute resolution process is ongoing." *M.R. v. Ridley Sch. Dist*., 744 F.3d 112, 123–24 (3d Cir. 2014) (quotation omitted). Although the IDEA does not specify which party pays when a child's pendency placement is at a private school, "the school district's obligation to do so is well established by case law." *M.R*., 744 F.3d at 118–19 (quotation omitted); see also *Susquenita Sch. Dist*., 96 F.3d at 87 ("Without interim financial support, a parent's 'choice' to have his child remain in what the state has determined to be an appropriate private-school placement amounts to no choice at all."). The IDEA's pendency provision "therefore requires a school district to continue funding whatever educational placement was last agreed upon for the child until the relevant administrative and judicial proceedings are complete." *Doe*, 790 F.3d at 452.

Determining pendency placement requires the Court to identify the student's "then current educational placement." *De Paulino,* 959 F.3d at 532. This can mean either 1) the placement described in the student's most recently implemented IEP, 2) the operative placement actually functioning at the time when the due process proceeding was commenced, or 3) the placement at the time of the previously implemented IEP. *Doe*, 790 F.3d at 452. "The placement can [] be changed if an impartial hearing officer or state review officer finds the parents' new placement to be appropriate by adjudicating the IEP dispute in the parents' favor, and the school district chooses not to appeal the decision." *De Paulino*, 959 F.3d at 532.

In *Mendez,* the Second Circuit addressed the legal standard in seeking immediate prospective payment for a student's pendency placement under Section 1415(j) of the IDEA. First, the Court recognized that the stay-put provision of the IDEA operates as an "automatic preliminary injunction," which "substitutes an absolute rule in favor of the status quo—that is, the maintenance of a student's then-current educational placement—for the standard preliminary injunction analysis involving irreparable harm, the likelihood of success on the merits, and the balance of hardships." *Mendez*, 65 F.4th at 62. As such, the stay-put provision "require[s] a school district to continue funding [the then-current] educational placement . . . until the relevant administrative and judicial proceedings are complete." *Id.* at 61. With respect to those plaintiffs' request for an injunction requiring DOE to immediately fund those students' pendency placements at iBRAIN, the Court held:

> The IDEA's stay-put provision entitles families to automatic relief with respect to educational placement but not with respect to payments. Parents seeking educational payments may still be entitled to automatic injunctive relief if they can show that a delay or failure to pay has threatened their child's placement.
>
> . . .
>
> 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. But absent such a showing, the DOE is not obliged to circumvent its ordinary payment procedures.

Id. at 58, 63. Thus, the Court found that the IDEA "does not create a procedural right to *immediate* payment, at least not absent a showing that a child's placement will be put at risk." *Id.* at 64.

Mendez, therefore, does not require or discuss irreparable harm for payment in the ordinary course (or immediate payment, for that matter, which requires a showing that the failure to pay has threatened or put at risk the child's placement). As such, this Court's holding does not impact Plaintiffs' Motion for injunctive relief, which clearly seeks an order declaring the Students' pendency is at iBRAIN with private transportation and nursing services, where applicable, and requiring DOE to issue pendency payments in the ordinary course, including late fees and interest.

II. THE DISTRICT COURT ERRED IN DENYING THE PRELIMINARY INJUNCTION FOR FAILURE TO SHOW IRREPARABLE HARM

The District Court erroneously found that Parents' claim for a preliminary injunction as to pendency could not be sustained because they did not show irreparable harm. However, because the IDEA's stay-put provision entitles families, like Plaintiffs, to automatic implementation of pendency, *Mendez*, 65 F.4th at 56, 59 (2d Cir. 2023), this Court should reverse the District Court's decision denying Appellants' Motion for injunctive relief because there was no showing of irreparable harm, and grant the requested relief for an order on pendency, including funding for the Students' pendency placements. Without the requested relief, these Students are left without a pendency placement, "an impossible result." *Gabel ex rel. v. L.*G., 358 F. Supp. 2d 313,325 (2d Cir. 2005).

The Second Circuit's holding in *Mendez*, to wit, that the IDEA's stay-put provision does not entitle families to expedited payment of pendency funding does not alter the fact that families, like Appellants, are entitled to automatic implementation of pendency. *Mendez*, 65 F.4th at 59. Here, Appellants are not asking for immediate funding of pendency. DOE was aware of its obligations to pay pendency when Plaintiffs filed their DPCs. The point of the ruling in *Mendez* was that, when DOE does not contest pendency, parents are not entitled to "fast-track" payments; DOE may make payments in its "ordinary course." The *Mendez* Court noted with significance that DOE had indicated "that it [was] committed to making the requisite payments and will do so voluntarily in the ordinary course of business, without the need for Court intervention . . . ." *Mendez*, 65 F.4th at 60 (internal citation and quotation marks omitted) (alteration in original).

Here, DOE did not make any such representation to the District Court. Rather, DOE represented that it does not agree to the scope of pendency, and, as such, does not recognize an obligation to implement pendency or initiate payment of the pendency placement. This dispute was envisioned in *Mendez* and corrected in *Moonsammy*. Thus, even if it could be said that Appellants are attempting to "fast track" immediate payments in violation of *Mendez*, which they are not, Appellants are entitled to "an order establishing that iBrain is the student's program [placement] and the scope of that funding based on last unappealed order is nursing and transportation." [A-68].

Neither irreparable harm, nor a showing that the placement is in jeopardy, is required to obtain a court order declaring a student's pendency and ordering funding in the ordinary course, as recognized in *Mendez. E.g.*, *Crespo v. Aviles-Ramos*, 2025 U.S. Dist. LEXIS 213720 (granting in part plaintiffs' motion for preliminary injunction by declaring students' pendency is at iBRAIN and requiring DOE to fund pendency placements in the ordinary course, without finding irreparable harm or jeopardy to students' pendency placements). In *Crespo*, the district court clearly stated: "It is well-established that DOE's legal obligations under Section 1415(j) are not dependent upon parties obtaining pendency orders in administrative proceedings. Indeed, students may seek injunctive relief in federal court to enforce their rights under the stay-put provision without first seeking a pendency order at the administrative level at all." *Id.* at *19-20 (citing cases). Applying that reasoning, that court declared iBRAIN as those students' pendency placement *and* required DOE to fund their placement, including tuition and transportation, in the ordinary course. *Id.* at *23-24. Likewise, here, the District Court should have granted Plaintiff-Appellants' Motion for injunctive relief without regard to irreparable harm or whether the placements were in jeopardy.

While the District Court understood that the Parents' argument was not the same argument rejected in *Mendez*, the Court nonetheless erroneously interpreted the requested relief as involving simply an order requiring payment. [A-84, 99-100]. As a result, the District Court incorrectly determined that Parents failed to show irreparable harm because there was no showing that DOE was not going to abide by its obligations under § 1415(j). [A-82]. By framing the relief sought as *only* a request for payment, the Court misunderstood the Parents' argument and applied the wrong legal standard. As Plaintiffs are entitled to an automatic preliminary injunction as to pendency, which the Second Circuit recognizes goes hand-in-hand with placement, the District Court should have ordered DOE to issue payments for the Students' pendency placements in the ordinary course. *Mendez*, 65 F.4th at 63 (recognizing as true that "funding goes hand-in-hand with placement" but finding that Section 1415(j) does not require DOE to "automatically fast-track funding"); *Zvi D. by Shirley D.,* 694 F.2d at 906 ("[I]mplicit 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 the due process hearing.").

The Parents' requested relief required a multi-step analysis: 1) What the scope of pendency is, *i.e.* does it include tuition only or related services, and the payment of additional fees, such as interest and late fees listed under the relevant vendor agreements when DOE delays payment? 2) Can DOE refuse or delay funding the Students' entire pendency placement if it disputes any portion of the pendency placement, *i.e.*, tuition increases or funding of private transportation when it wishes to substitute DOE transportation? 3) Does funding go hand-in-hand with placement? And finally, 4) Is a plaintiff entitled to payment in due course for "automatic" pendency placement without unreasonable delays? In concluding that the Parents were not entitled to injunctive relief ordering payment of pendency because they had not shown irreparable harm, the District Court conflated this analysis and compressed all these questions into one single question, *i.e.*, whether the Students were entitled to immediate payment. The District Court failed to consider the first three questions and, in doing so, committed reversible error.

Appellants are entitled to a court determination of what constitutes pendency. By operation of law, each Student here is entitled to pendency placement at iBRAIN with private transportation, and nursing services where applicable, pursuant to the unappealed decisions of the administrative hearing officers. *See, e.g.*, 34 C.F.R. § 300.518(d), (a) ("If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section."); *Bd. of Educ. of Pawling Cent. Sch. Dist. v. Schutz*, 290 F.3d 476, 482 (2d Cir. 2002) (noting that "the decision of a hearing officer agreeing with the position of the parents" is considered an agreement for purposes of pendency). In contravention of the clear dictates of the IDEA, DOE, without explanation or justification, failed to implement the Students' pendency placements. As a result of DOE's failure to make required payments for the constituent components of the unappealed, relevant administrative orders for the Students, in combination with the District Court's refusal to consider these issues, Appellants were denied the "automatic injunction" guaranteed in § 1415(j). *See Mendez*, 65 F.4th at 62; *De Paulino*, 959 F.3d at 529 ("But where the IDEA's stay-put provision is implicated, the provision triggers the applicability of an automatic injunction designed to maintain the child's educational status quo while the parties' IEP dispute is being resolved."). As of the date of this filing, DOE has still refused to recognize the pendency placements of ten Students and fund all of the components of the pendency placements of the remaining students. DOE's own filing in the underlying case establishes that it has not implemented *any* pendency placements for these Students absent a pendency order from the IHO. [ECF. No. 39-1]. And, even when an order has been entered, it will not implement the order unless it agrees with it. [*Id.*].

In *Mendez*, this Court summarized the appellants' arguments "as follows: (1) § 1415(j) functions as an 'automatic injunction,' with no requirement to show irreparable harm in order to maintain an educational placement, and (2) 'funding goes hand-in-hand with placement.'" *Mendez*, 65 F.4th at 62. The Court agreed with both of these propositions, stating, "propositions (1) and (2) are both true, and DOE is obliged to fund their children's educational placements for the duration of the proceedings . . . ." *Id.* at 63. However, the *Mendez* Court was never directly confronted with the question presented to this Court today, that is, whether Appellants have to establish that a student's placement is at risk or in jeopardy to be entitled to an automatic preliminary injunction establishing the scope of pendency and requiring payment in the ordinary course, not immediate payment, when DOE is actively disputing the scope of services it must reimburse under the IDEA's "stay put" provision.

Courts, both prior and subsequent to this Court's decision in *Mendez*, have answered that question in the negative, recognizing that the "automatic injunctive" effect of Section 1415(j) entitles a plaintiff to order establishing the scope of services to be reimbursed in the first instance, regardless of whether that plaintiff can establish either jeopardy to placement in the test that was established under *Mendez*, or irreparable harm under the more traditional test for injunctive relief. In *Moonsammy v. Banks*, 2024 U.S. Dist. LEXIS 99415 (S.D.N.Y. June 3, 2024), the parties disputed whether a partially appealed SRO decision could constitute pendency placement with regard to those aspects of the decision that were left unchallenged. *See Moonsammy*, 2024 U.S. Dist. LEXIS 99415 at *1618. The court held that it could and found that the SRO's determinations on prongs I and II of the *Burlington/Carter* test, specifically, that DOE had denied the student a FAPE and that iBRAIN was an appropriate placement, neither of which were the subject of the parents' appeal, formed the basis of pendency. *See* 2024 U.S. Dist. LEXIS 99415 at *18.

The *Moonsammy* court found that this holding was "consistent with the purpose of the stay-put provision—'to maintain the child's educational status quo.'" 2024 U.S. Dist. LEXIS 99415 at *19-20 (quoting *De Paulino*, 959 F.3d at 529, 532). Finally, "[b]ecause the stay-put provision operates as 'an automatic preliminary injunction,'" the court found, over DOE's objection, that the parents "are entitled to a preliminary injunction requiring the Department to fund the services granted by SRO Bates's decision—namely, A.M.'s (1) tuition and (2) transportation to and from school." *Id*. at *20. Nevertheless, consistent with *Mendez*, the court declined to issue a preliminary injunction ordering DOE to *pay these amounts immediately*. *See Moonsammy*, 2024 U.S. Dist. LEXIS 99415 at *20-21 (citing *Mendez*, 65 F.4th at 63).

Courts prior to *Mendez* have also similarly ruled. In *Araujo v. N.Y.C. Dep't of Educ.*, 2020 U.S. Dist. LEXIS 175767 (S.D.N.Y. Sep. 24, 2020), the court issued a preliminary injunction ordering DOE to fund tuition for the 2020-21 school year, none of which payments had been made up to that point. *See Araujo*, 2020 U.S. Dist. LEXIS 175767 at *9-11. The court rejected the defendant's argument that the plaintiffs had not shown irreparable harm, reasoning:

> Plaintiffs seek immediate vindication of their undisputed rights to pendency funding via preliminary injunction. They correctly note that the stay-put provision typically operates as an "automatic injunction" foreclosing consideration of irreparable harm and the other factors of the traditional preliminary injunction inquiry, and thus that an injunction should issue as a matter of course. *Ventura*, 959 F.3d at 529. Accordingly, a preliminary injunction granting pendency funding for the thirteen students the parties agree have pendency at iBRAIN is warranted.

Araujo, 2020 U.S. Dist. LEXIS 175767 at *10.

Although *Araujo* was decided prior to *Mendez* and did not directly address the need to establish jeopardy to placement in the context of a demand for immediate payment, choosing instead to address the defendant's arguments that the plaintiffs had not shown irreparable harm in the context of the court's determination of the outer limits of pendency, its holding nevertheless remains relevant in light of *Moonsammy*'s distinction between the limitations imposed by *Mendez* regarding immediate payment and the need for a declaration by the court determining the scope of pendency in cases where DOE actively disputes pendency. The holding in *Araujo* is wholly consistent with the decision in *Moonsammy* recognizing this distinction and therefore also in line with *Mendez*.

A parent's entitlement to a preliminary injunction declaring the scope of pendency placement and ordering funding for that pendency placement in the ordinary course was recently affirmed in Crespo v. Aviles-Ramos, 2025 U.S. Dist. LEXIS 213720. In *Crespo,* as here, Parents sought a preliminary injunction for a declaration of the scope of pendency based on the pendency-setting event, a prior SRO decision. *Id.* at *9-10. Judge Vargas issued a decision declaring that an SRO decision in favor of one student's parents establishes the student's pendency for the 2025–2026 SY, regardless of any pending appeal, and that DOE is required to fund the other student's tuition and transportation (which were not appealed) without waiting for the conclusion of that student's administrative appeal as to nursing costs.

Id. at *19-20. Further, in response to DOE's argument that it did not owe pendency payments until a pendency order was entered defining the scope of pendency, Judge Vargas held "it is well established that DOE's legal obligations under § 1415(j) are not dependent on parties obtaining pendency orders in administrative proceedings." *Id.* Judge Vargas stated, "When the City consents in the prior administrative proceeding to the students' private placement at a particular school, '*at that moment*, the City assumed the legal responsibility to pay for [that school's] educational services to the Students as the agreed-upon educational program that must be provided and funded during the pendency of any IEP dispute.'" *Id.* at *16-17, quoting *De Paulino*, 959 F.3d at 532 (emphasis added). Judge Vargas squarely rejected DOE's argument that it has no obligation to implement pendency services based upon the prior SRO decisions until it affirmatively agrees to pendency placement at iBRAIN. *Id.* at 13-14.

As in *Crespo,* DOE's *de facto* policy of refusing to implement pendency placement unless and until there is a formal pendency order is the very reason for the Parents' request to the District Court for a preliminary injunction declaring the scope of pendency based on the underlying unappealed administrative orders. [A-68-69]. As Mr. Bellantoni argued at the hearing before the District Court:

> The bottom line is given that DOE has a (inaudible) due course, but doesn't really ever share or discuss what that is,

> without an order, without defined pendency, without the district conceding pendency lies at iBrain, that this issue will just linger on throughout the school year, and the students, the parents -- there will be no certainty as to whether or not this placement is a -- is a particular pendency placement." *Id.*

Because DOE has refused to implement all placement components of these Students' pendency placements without pendency orders, DOE has violated the automatic nature of the preliminary injunction as to pendency, mandated by the IDEA. As recognized in *Moonsammy*, *Araujo,* and *Crespo*, Appellants are entitled to an injunction as a matter of course declaring the scope of these Students' pendency placements at iBRAIN, with contracted private special transportation and nursing services where applicable, without the necessity of demonstrating irreparable harm and a likelihood of success under the traditional preliminary injunction standard.

At the hearing on the motion, in response to the District Court's question as to whether DOE would not pay or not recognize its obligations to implement pendency or whether because of change in rates DOE would not do something, DOE's counsel did not state DOE's agreement as to *any* portion of *any* Students' pendency placement:

> Changes in things like tuition or changes in things like transportation constitute a change in pendency. These types of changes that, again, may not change the fact that the student has a basis for pendency, but the specific aspects of the pendency placement and the specific aspects of DOE's obligations come up during the disputes at the administrative level. So our position is that, while we're working to resolve these disputes through the administrative process, as we do every year, while these things happen, there hasn't been any allegations that these students are not in classes at iBrain and receiving the services that they allege that they're entitled to receive.

[A-82-83]. DOE had not implemented the pendency placements, because it was contesting the scope of the placements based on purported "changes" like tuition and transportation, and, therefore, if does not have to implement pendency and initiate payments. *Id.* DOE's position is that it contests the scope of these Students' pendency. *Id.* Therefore, in accordance with *Araujo*, *Moonsammy*, and *Crespo*, regardless of whether Parents can establish that the Students' placements are at risk or in jeopardy under *Mendez*, or that they will suffer irreparable harm under the traditional preliminary injunction standard, Appellants were entitled to an order regarding the scope of pendency.

Here, Appellants are not asking the Court to order DOE to "fast-track" payments, or otherwise "frustrat[e]" DOE's "fiscal policies. DOE has been aware of its pendency payment obligations, at a minimum, since the filing of the Ten Day Notices ("TDNs") in June 2025, and the filing of the DPCs in June and July of 2025.

Moreover, unlike *Mendez*, where DOE fully acknowledged its pendency obligations and promised it would pay, DOE disputes the full scope of the pendency obligations owed. Indeed, *Mendez* relied in part on *Abrams v. Porter*, No. 20-3899-cv, 2021 U.S. App. LEXIS 36362 (2d Cir. Dec. 9, 2021). The Second Circuit noted of that case, "Because 'both sides agreed that there was no risk of the students losing their pendency placement,' the Court held that 'the district court did not abuse its discretion in denying an injunction under the IDEA's stay-put provision.'" *Mendez*, 65 F.4th at 63 (quoting *Abrams*, No. 20-3899-cv, 2021 U.S. App. LEXIS 36362 at *6).

This Court in *Mendez* has already answered the third and fourth questions of the analysis. As to the third question, the plaintiffs in that case argued that placement and funding go hand-in-hand. *Susquenita Sch. Dist.* 96 F.3d 78 (3d Cir. 1996). Indeed, placement includes funding, particularly where pendency lies in a private school or private placement. In *Zvi D. by Shirley D.*, the Second Circuit stated:

> 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, prohibited by the Act.

Zvi D. by Shirley D., 694 F.2d at 906. The plaintiffs further argued that in *M.R. v. Ridley Sch. Dist.*, the Third Circuit held: "[W]e have expressly held that financing goes hand-in-hand with pendent private school placement: It is undisputed that once there is a state agreement concerning pendent placement, *a fortiori*, financial responsibility on the part of the local school district follows." *M.R.*, 744 F.3d at 123.

Finally, the plaintiffs pointed out that the notion that payment and placement go hand-in-hand harmonizes with the holdings of *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359 (1985), and its progeny as dispute resolution processes continue, whether or not the parent's claims are meritorious. *See Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036 (9th Cir. 2009)("It is unlikely that Congress intended the protective measure to end suddenly and arbitrarily before the dispute is fully resolved."); *Mackey ex rel. Thomas M.*, 386 F.3d at 160–161 (quoting *Drinker by Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 867 (3d Cir. 1996) ("[T]he stay-put provision acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process.").

In short, Appellants are entitled to an automatic injunction declaring the scope of the pendency placements of these Students for the 2025-2026 SY, including tuition at iBRAIN, private specialized transportation, and nursing services, where applicable, and funding for these programs, including any associated Late Fees pursuant to the contracts, which accrued as a result of DOE's delay in implementing pendency. The Appellants are not seeking a preliminary injunction compelling *immediate* or "fast-track" payments. The Appellants need court intervention to compel DOE to comply with Section 1415(j)—to implement and fund all components of the Students' pendency placements in the ordinary course.

III. THE DISTRICT COURT ERRED IN DENYING THE PRELIMINARY INJUNCTION FOR FAILURE TO SHOW LIKELIHOOD OF SUCCESS ON THE MERITS

The District Court also erred in finding that Plaintiffs' claim for a preliminary injunction could not be sustained without showing a likelihood of success on the merits. This determination was in error because Plaintiffs' Motion for preliminary injunctive relief requested a determination to declare iBRAIN as the Students' proper pendency placement. As such, as fully addressed in Section II, *supra¸* the Appellants were not required to establish the elements required for a traditional preliminary injunction.

In any event, Appellants established the likelihood of success on the merits for the Students' pendency claims for the 2025-2026 SY, because every special education student is automatically entitled to pendency, the final administrative orders here undisputedly establish each Student's pendency placement as a matter of law, and DOE has failed to implement and fund pendency for all of the Students.

Each Student has a final, unappealed administrative order that was issued in their favor. *T.M. ex rel. A.M.*, 752 F.3d at 152; *Mackey ex rel. Thomas M.*, 386 F.3d at 163. [ECF Nos. 1-1, pp. 18-30; 1-2, pp. 17-32; 1-3, pp. 17-41; 1-4, pp. 18-32; 1-5, pp. 20-36; 1-6, pp. 17-29; 1-7, pp. 18-28; 1-8, pp. 20-35; 1-9, pp. 17-35; 1-10, pp. 16-27; 1-11, pp. 17-25; 1-12, pp. 19-30; 1-13, pp. 19-28; 1-14, pp. 20-27; 1-15, pp. 18-33; 1-16, pp. 18-30; 1-17, pp. 18-38; 1-18, pp. 19-32 to 1-19, pp. 1-4]. Those pendency-setting events establish the basis of their pendency placements while the due process proceedings are ongoing for the current school year. 34 C.F.R. § 300.518(d) states: "If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section." Subsection (a) provides that "during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, . . ., the child involved in the complaint must remain in his or her current educational placement." 34 C.F.R. § 300.518(a). *See Bd. of Educ. of Pawling Cent. Sch.*

Dist., 290 F.3d at 482 (noting that "the decision of a hearing officer agreeing with the position of the parents" is considered an agreement for purposes of pendency).

Therefore, DOE is required to implement and fund the Students' last agreed-upon placements, as established by the administrative orders cited above. Appellants are entitled to pendency funding for tuition, transportation and nursing services (where applicable) in accordance with the respective agreements, retroactive to the dates of filing the respective DPCs in the underlying proceedings. *See Moonsammy*, 2024 U.S. Dist. LEXIS 99415 at *18-20. Accordingly, the District Court erred in denying a preliminary injunction based on Appellants' alleged failure to demonstrate a likelihood of success on the merits, which was not necessary to obtain the requested automatic relief under Section 1415(j) and in any event, was adequately demonstrated.

IV. PLAINTIFFS ARE ENTITLED TO CONTRACTUAL LATE FEES AND INTEREST AND THE DISTRICT COURT ERRED BY FAILING TO ADDRESS PLAINTIFFS' REQUEST FOR THOSE FEES

If this Court grants Plaintiff-Appellants the requested relief, declares iBRAIN with related services to be the Students' pendency placements, and orders DOE to fund those pendency programs, it should also find that DOE is obligated to pay the full value of the respective tuition, transportation, and nursing agreements, which includes late fees and interest that has accrued due to DOE's failure and refusal to timely issue pendency payments. *See Paulino v. N.Y.C. Dep't of Educ.,* 2024 U.S. Dist. LEXIS 132633, at *14-15 (S.D.N.Y. July 24, 2024); *Fannie Mae v. 204 Ellery St.*, LLC, No. 23 CV 5343 (ENV)(RML), 2025 U.S. Dist. LEXIS 40829, at *30-31 (E.D.N.Y. Mar. 6, 2025) (report and recommendation finding that the defendant is liable for late fees for delinquent payments by the terms of a loan agreement); *see also Canon U.S.A., Inc. v. Sysorex Gov't Servs., Inc.*, No. 2:23-cv-8001 (DLI)(LGD), 2024 U.S. Dist. LEXIS 79881, at *17-18 (E.D.N.Y. May 1, 2024) (report and recommendation finding that the defendant is liable for $57,410.62 in late fees for delinquent payments, pursuant to the relevant agreements).

It is well-established that "the sole source of DOE's reimbursement obligations in each Plaintiff's case is the applicable administrative order." *See Davis v. Banks*, No. 22-CV-8184 (JMF), 2023 U.S. Dist. LEXIS 160092, at *13 (S.D.N.Y. Sep. 11, 2023) (citing *De Paulino*, 959 F.3d at 532 ("observing that DOE's 'legal responsibility to pay' arose from the final, unappealed administrative order.")). Because the administrative decisions here ordered DOE to fund the total costs of tuition, transportation, and nursing, where applicable, based on the service agreements between the Parents and the providers, DOE should be compelled to pay the associated late fees and interest that accrued under those agreements due to

DOE's non-compliance with its pendency obligations.

Alternatively, at a minimum, for those Students whose pendency-setting administrative orders explicitly require DOE to fund pendency per the terms of contracts,[1] those Plaintiff-Appellants are entitled to late fees and interest. *See e.g.*, *Mendez v. Aviles-Ramos*, No. 25-cv-1096-CM, 2025 U.S. Dist. LEXIS 195004 (S.D.N.Y. Oct. 1, 2025).

In *Mendez v. Aviles-Ramos*, Judge McMahon issued an Opinion and Order, granting a parent's request for late fees and interest under the transportation agreement, based on the language of the applicable administrative order. That decision stated:

> Because "[t]he IDEA itself provides no guidance as to the DOE's obligation to pay for transportation and related services," *Diaz v. Aviles-Ramos*, No. 1:24-CV-09340 (JLR), 2025 U.S. Dist. LEXIS 147580, 2025 WL 2172298, at *5 (S.D.N.Y. July 31, 2025), "the sole source of the DOE's reimbursement obligations is the applicable administrative order," *Davis v. Banks*, No. 22 Civ, 8184 (IMF), 2023 U.S. Dist. LEXIS 160092, 2023 WL 5917659, at *4 (S.D.N. Y. Sept. 11, 2023) (emphasis added).

[1] Students E.B., L.S., S.C., M.B, and A.C.

Id. at *12-13. There, the administrative decision awarded the parent "funding from the district for the contracted amount for transportation services . . . ." *Id.* at *12. As such, the court found that "the existence and extent of the DOE's reimbursement obligations turn on the language of the applicable administrative order" and concluded: "Applying the relevant language from the SRO's January 24, 2025 Order, the Court finds that the DOE must pay for late fees and interest arising from Plaintiff's Transportation Agreement with Sisters Travel." *Id.* at *12 (citing cases). Likewise, here, the Court should at least find that Plaintiff-Appellants Bruckauf, Rivas, Hidalgo, Beckford, and Talley are entitled to late fees and interest under the terms of the contracts, based on the language of the binding administrative order.

In short, the District Court further erred by failing to address and grant Plaintiff-Appellants' request for contractual late fees and interest, which accrued solely because of DOE's refusal and failure to timely implement and fund pendency.

CONCLUSION

For the foregoing reasons, Appellants respectfully ask this Court to reverse the District Court's denial of Plaintiffs' motion for preliminary injunction, and to issue an order declaring that the Students' pendency is at iBRAIN, with special transportation and nursing services, where applicable, and requiring DOE to fund those pendency placements in the ordinary course, including payment of late fees and interest under the terms of the respective tuition, transportation, and nursing contracts.

Dated: December 9, 2025
New York, NY
Respectfully Submitted,

/s/ *Nicole Lancia*

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RESPONDENTS' BRIEF, DATED MARCH 10, 2026

25-2127

United States Court of Appeals for the Second Circuit

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., CRYSAL CROSLEY, individually and as parent and natural guardian of Z.C., 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 and SCOTT THOMAS, individually and as parents and natural guardians of A.T., 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., and PATRICK DONOHUE, individually and as parent and natural guardian of S.J.D.,

Plaintiffs-Appellants,

against

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

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York

BRIEF FOR APPELLEES

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March 10, 2026

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

PRELIMINARY STATEMENT

This action under the Individuals with Disabilities Education Act (IDEA) is one of many that this Court has seen involving the Interna-tional Institute for the Brain (iBrain). And it is one of multiple iBrain actions pending before the Court where the plaintiffs have demanded the immediate intervention of federal courts through motions for pre-liminary injunctive relief that are foreclosed by this Court's precedent.
Plaintiffs here are the parents of 18 children attending iBrain who seek preliminary injunctive relief based on a demand for pendency de-terminations and pendency funding. But many of plaintiffs' claims are now moot in light of developments that have unfolded in the time since plaintiffs rushed to federal court in lieu of first pursuing their adminis-trative remedies in the manner contemplated by the IDEA.
Mootness aside, the United States District Court for the Southern District of New York (Failla, J.) properly denied plaintiffs' preliminary injunction motion, correctly recognizing that this Court's decision in Mendez v. Banks, 65 F.4th 56 (2d Cir. 2023) controls. Mendez makes clear that while the IDEA's pendency or "stay-put" provision entitles a student to automatic relief with respect to continued school placement, it does not afford plaintiffs immediate relief with respect to payment or otherwise, at least not when the student's placement is not threatened.

Here, all 18 students remain at iBrain, the parents' chosen school, and plaintiffs have made no showing that the students' placements are threatened. The district court was thus correct to conclude that plaintiffs' preliminary injunction motion is barred by Mendez, a case where this Court rejected a similar attempt by plaintiffs' lawyers to obtain such relief under the IDEA's stay-put provision.

Recognizing that Mendez shuts the door to such relief, plaintiffs try to restyle their demand as a request for pendency determinations—in effect, declaratory relief. But that request is moot with respect to al-most all the students, who have already received pendency orders for pendency at iBrain. And in any event, a preliminary injunction is not an appropriate mechanism to seek declaratory relief. That is particularly so in the pendency context, where this Court has held that preliminary in-junctive relief is available only upon showing that a placement is threat-ened. Absent such a showing, plaintiffs should instead pursue their pen-dency claims through administrative channels, as intended by the IDEA. Indeed, plaintiffs have already done so successfully here with respect to the majority of the plaintiff students, proving that the IDEA approach to pendency works without parties constantly demanding federal courts' instant intervention.

ISSUE PRESENTED

Should this Court affirm the denial of plaintiffs' preliminary in-junction motion regarding their purported pendency at iBrain, where
(a) plaintiffs never presented any evidence of irreparable harm nor did they demonstrate that any of the students were at risk of losing their placement,

and (b) on top of that, plaintiffs have already received much of the relief that they requested, making their request for a preliminary injunction largely moot?

STATEMENT OF THE CASE

A. The IDEA's provisions regarding tuition reimbursement and pendency

Under the IDEA, children with disabilities are entitled to a free and appropriate public education (FAPE), which includes special edu-cation and related services provided at public expense in a suitable school. 20 U.S.C. § 1400(d)(1)(A). School districts must create an indi-vidualized education program (IEP) for qualifying children to ensure that they receive a FAPE. Id. § 1414(d).

Parents dissatisfied with the recommended program may unilat-erally enroll their child in a private school "at their own financial risk." Sch. Comm. of Burlington v. Dep't of Educ., 471 U.S. 359, 374 (1985); see also Ventura de Paulino v. N.Y.C. Dep't of Educ., 959 F.3d 519, 526

(2d Cir. 2020). They may obtain retroactive court-ordered reimburse-ment from the school district, after the IEP dispute is resolved adminis-tratively, if they satisfy a three-part test known as the Burlington-Carter test. Ventura de Paulino, 959 F.3d at 526-27.

To seek tuition reimbursement, the parent files an administrative due process complaint, which, in New York, triggers a two-tier adminis-trative process. See 20 U.S.C. § 1415(b)(6)(a); N.Y. Educ. Law

§ 4404(1)(a); Mackey v. Bd. of Educ., 386 F.3d 158, 160 (2d Cir. 2004). At the first stage, an impartial hearing officer (IHO) conducts a formal hearing and makes findings of fact. N.Y. Educ. Law § 4404(1)(a). At the second stage, a party may appeal the IHO's determination to a state re-view officer (SRO), whose decision is final. Id. § 4404(2); see 20 U.S.C.
§ 1415(i)(1). A party aggrieved by the SRO's decision may then seek ju-dicial review. 20 U.S.C. § 1415(i)(2)(A); N.Y. Educ. Law § 4404(3).

The IDEA's "stay-put" or "pendency" provision provides that "dur-ing the pendency of any proceedings," the child is entitled to "remain" in their "then-current educational placement." 20 U.S.C. § 1415(j). As this Court has "interpreted this provision," the stay-put provision also entitles plaintiffs to funding for the child's then-current educational placement "until the relevant administrative and judicial proceedings are complete" on the parent's Burlington-Carter claim for

reimbursement. Ventura de Paulino, 959 F.3d at 531 (internal citation and quotation marks omitted). Even if an administrative officer or a court ultimately rules in the school district's favor on funding for the school year, the school district has "no recourse under the IDEA to re-coup the sums it expended" toward keeping the child in that uninter-rupted placement under the stay-put provision. Id. at 535.

"Then-current educational placement" means "the child's last agreed-upon educational program before the parent requested a due process hearing to challenge" the IEP—i.e., the start of the required ad-ministrative process. Id. at 532. Absent an explicit agreement between the school district and the parent, the school district is deemed to agree to the placement if (a) the administrative review officers issue a pendency order granting the placement pending the completion of the pro-ceedings addressing the parent's Burlington-Carter claim for reim-bursement; and (b) the school district chooses not to appeal. Mendez, 65 F.4th at 59; Ventura de Paulino, 959 F.3d at 532.

Under this Court's unambiguous precedent, the stay-put provision "entitles families to automatic relief with respect to educational place-ment" but generally "not with respect to payments" for that placement. Mendez, 65 F.4th at 59. Thus, if a student's placement is threatened, a plaintiff can secure preliminary injunctive relief under the stay-put

provision. For instance, in Lillbask v. Connecticut Department of Edu-cation, the school district proposed moving a disabled child out of a mainstream public school program and into a private special education program; while the parties disputed which placement was appropriate, the child remained in public school, pursuant to a preliminary injunc-tion issued by the district court under the stay-put provision. Lillbask ex rel. Mauclaire v. Conn. Dep't of Educ., 397 F.3d 77, 83 (2d Cir. 2005).

Similarly, parents may obtain retroactive payments for a pendency placement by way of preliminary injunctive relief "if they can show that a delay or failure to pay has threatened their child's placement." Men-dez, 65 F.4th at 59. But if there is no showing that a student's placement is threatened, then parents are simply not entitled to preliminary injunctive relief under the IDEA's stay-put provision. See id. at 63.

The pendency obligation ends once there is a final decision about reimbursement for the school year under the Burlington-Carter test—in other words, once the IHO has issued findings of fact and a decision (FOFD) on the due process complaint that is no longer subject to an ap-peal to the SRO or a challenge in federal court. Mendez, 65 F.4th at 61. The scope of the school district's reimbursement obligation arises from the FOFD, and disputes about its contours are reserved for any review of that order, whether it be by the SRO or then by the courts. See supra at 4. Thus, most disputes about funding—i.e., those which do not jeop-ardize the child's placement for the school year—do not warrant prelim-inary injunctive relief under the stay-put provision.

B. Plaintiffs' rush to court while administrative pendency proceedings were ongoing, despite a lack of any risk to the children's placements

Plaintiff parents brought this action on behalf of 18 students with disabilities who attend iBrain, seeking pendency funding for the 2025-2026 school year (Appendix ("A") 16-60).

Between June 27 and July 7, 2025, each parent initiated the ad-ministrative process for each student with an administrative due pro-cess complaint alleging that the New York City Department of Education ("DOE") denied the student a FAPE for the 2025-2026 school year and seeking funding for tuition and related services at iBrain for that year (A33-51). Each plaintiff requested an interim pendency order finding that iBrain was the student's pendency placement for that school year (id.). Plaintiffs based their pendency claims on prior administrative or-ders from various years (see Brief for Appellants ("App. Br.") 4, 6, 33)—even though they later acknowledged that iBrain tuition and the costs of related service providers have increased since the prior orders were is-sued (see id. at 32, 39).

On July 9, 2025, mere days after filing their administrative due process complaints and before anything could happen administratively, plaintiffs rushed to federal court to file this action (A16-60). This was reminiscent of the strategy that the plaintiffs in Mendez employed—while represented by the same law firm as plaintiffs here[1]—though the Mendez plaintiffs at least waited until obtaining pendency orders from IHOs before "sprint[ing] to federal court." 65 F.4th at 60.

In their federal complaint, plaintiffs each sought: (1) a declaratory judgment that their pendency placements were at iBrain "throughout the administrative and judicial proceedings relative to" their 2025-2026 due process complaints, and that they were entitled to "full funding of tuition at iBRAIN, along with all related services, including … transpor-tation … where appropriate, during the 2025-2026" school year; (2) an injunction

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[1] In *Mendez*, plaintiffs' lawyers were the Brain Injury Rights Group, which has since rebranded as Liberty and Freedom Legal Group, Ltd., a 501(c)(3) tax-exempt organization for which the Brain Injury Rights Group, LTD is the parent company. *See* Liberty and Freedom Legal Group, "Firm Overview," at https://perma.cc/N5NPA7N9 (captured Nov. 25, 2025).

"[i]mplementing [p]endency [f]unding … in the ordinary course of business, without undue delay" to start no later than 35 days from the date of the injunction; and (3) an injunction requiring DOE to "immediately implement[] and adher[e] to all final, unappealedadministrative orders" for funding (A58-59). Plaintiffs also asked for the court to "eliminate any requirement that compels [p]arents to wait months" for a pendency order or pendency agreement with DOE before receiving pendency funding (A58).

C. The district court denies plaintiffs' motion for preliminary injunctive relief

On July 15, 2025, plaintiffs moved for a preliminary injunction requiring DOE to fund the students' purported pendency placements at iBrain under 20 U.S.C. § 1415(j), the stay-put provision of the IDEA (SDNY Dkt. No. 8).
The court heard argument on August 14, 2025, and denied plain-tiffs' motion from the bench, with a decision in writing on September 2, 2025 (A104). During the argument, the court focused its questions for plaintiffs on probing "what is the daylight … between your application for injunctive relief and the Second Circuit's Mendez decision of two years ago" (A64). Plaintiffs' lawyer explained that plaintiffs were "asking … for an order establishing that iBrain is the student's program []place-ment" (A68)—that is, "an order identifying, declaring the pendency pro-gram and the services connected to it" (A73).

The court then noted that plaintiffs "seemed to [be] … asking for … funding and payment within a reasonable time"; as the court further opined, "I don't understand why that needs to be through a request for emergency injunctive relief" (R72). The court denied plaintiffs' request for a preliminary injunction, noting "I don't see irreparable harm" (R81). The court also note that "[i]t's not clear" that plaintiffs "have a likelihood of success on the merits" (A96). The court further noted that plaintiffs seem to be "trying to get judges … to grant … the request for funding," if not immediate payment, but, in the court's view, "that is slic-ing things a little bit too thinly" since "ultimately what [plaintiffs are] really asking for is payment" (A99).

The court further noted that one of the plaintiff children, S.J.D., is the daughter of the founder of iBrain, Patrick Donohue, and that S.J.D.'s mother runs the bus company preferred by iBrain (A92). The court ob-served that "[t]he notion that S.J.D. is going to be kicked out … is laugh-able," and thus "the idea of bringing a [motion for a preliminary injunction] on her behalf" was "particularly galling" (A92).

D. Subsequent administrative and court developments

In October 2025, defendants moved to dismiss the complaint (SDNY Dkt. No. 25). That motion is still pending.

That same month, plaintiffs moved again for preliminary injunc-tive relief (SDNY Dkt. No. 28). The court held another hearing, and then promptly denied that motion (SDNY Oct. 10, 2025 Dkt. entry).

The following month, on November 24, 2025, in connection with defendants' motion to dismiss, DOE filed a status update with the dis-trict court (SDNY

Dkt. No. 39-1). This update reported that 14 of the 18 students—namely, A.C., A.T., C.B., D.O., E.D.R., H.C., L.C., L.S., M.B., M.C., S.C., S.J.D., V.G., and Z.C.—had already received administrative pendency orders establishing pendency at iBrain for the 2025-2026 school year (id.). DOE later notified the court that J.B. also has received an administrative pendency order establishing pendency at iBrain, which was not reflected in the prior status update due to a filing error by the impartial hearing officer (SDNY Dkt. No. 51 at 2-3). Thus, the majority of the students—at least 15 of the 18—have already received administrative pendency orders establishing their pendency at iBrain.

What's more, while many pendency funding issues remain subject to ongoing dispute at the administrative level (see SDNY Dkt. No. 39-1 (providing a status update for each case)), DOE has already provided substantial pendency funding to these students in accordance with these pendency orders. The November 2025 declaration reflects that DOE had paid, as of that date, over $1.7 million in pendency funding for these plaintiff students for the 2025-2026 school year (see id.).

On February 20, 2026, plaintiffs brought a third motion for pre-liminary injunctive relief, via order to show cause (SDNY Dkt. No. 47). This time, plaintiffs sought immediate funding, via the stay-put provision, of 1:1 nursing services for 6 of the plaintiff students (id.). The court denied that motion, too (SDNY Dkt. No. 52).

STANDARD OF REVIEW AND SUMMARY OF ARGUMENT

This Court should affirm the district court's denial of plaintiffs' motion for a preliminary injunction. This Court reviews the denial of an injunction under 20 U.S.C. § 1415(j) for abuse of discretion, examining the legal conclusions underpinning the decision de novo and the factual conclusions for clear error. Mendez, 65 F.4th at 62.

This case turns on the core principles that this Court settled in Mendez: that the stay-put provision "entitles families to automatic relief with respect to educational placement but not with respect to payments." 65 F.4th at 59. Rather, this Court can provide preliminary in-junctive relief as to payments, or otherwise, only if plaintiffs "can show that a delay or failure to pay has threatened their child's placement." Id. Here, plaintiffs have put forth no evidence to show—and indeed, have

not even attempted to argue—that any of the students ever faced any threat to their placements at iBrain.
Because this Court has spoken definitively on this point, plaintiffs' lawyers—the same ones whom this Court turned back in Mendez—try to refashion their request as a request for declaratory relief. But the same precedent forecloses that theory. In short, this Court has already held that a preliminary injunction under the stay-put provision will not issue absent a showing that the child's education placement is threatened. Plaintiffs have made no such showing.

For that reason, their preliminary injunction motion was properly denied.

Since the district court denied plaintiffs' motion, plaintiffs have, through the IDEA administrative process, obtained much of the relief that they seek, which only further underscores the lack of any basis for a preliminary injunction. Rather, many of their claims for relief are moot. Between the time that plaintiffs rushed in court at the beginning of the 2025-2026 school year, and now, almost all of the plaintiff stu-dents have received pendency determinations, via administrative or-ders, establishing their pendency placement at iBrain—which is the main relief that plaintiffs request from this Court. And DOE has already provided, as of November 2025, over $1.7 million in pendency funding for the first five months of the 2025-2026 extended school year for these 18 students, while additional disputes about the scope of pendency funding continue to play out through the administrative process. Far from showing any need for emergency relief, the record shows that the students' placements were never at risk, and that their administrative pendency claims are being resolved in due course.

ARGUMENT

THE DISTRICT COURT CORRECTLY DENIED PLAINTIFFS' REQUEST FOR A PRELIMINARY INJUNCTION COMPELLING PENDENCY FUNDING

At the outset, it is worth noting that plaintiffs make no effort to argue that they are entitled to a preliminary injunction under the traditional three-part test. See, e.g., Doninger v. Niehoff, 527 F.3d 41, 47 (2008). Plainly, they are not, but in any event they have abandoned such an argument. Rather, plaintiffs instead argue that the traditional test does not apply to them (see, e.g., App. Br. 29-30 (arguing that plaintiffs need not show irreparable harm); 39 (arguing that plaintiffs need not meet the traditional preliminary injunction test); 40 (same); 42 (same)).
Plaintiffs instead seek to rely on the IDEA's stay-put provision as the basis for their preliminary injunction. That provision simply specifies that "during the pendency of any proceedings" for tuition reimbursement under the Burlington-Carter test, "the child shall remain in [their] then-current educational placement." 20 U.S.C. § 1415(j). Plaintiffs' theory falls flat, because this provision is plainly about continuous placement of the child—and all the plaintiff students have maintained a continuous placement at their parents' preferred school, iBrain. The stay-put provision thus does not entitle plaintiffs to any further immediate relief via a preliminary injunction. And there is not even any room for doubt on that score, because this Court resolved the issue just two years ago, in Mendez. 65 F.4th at 59.

A. Under Mendez, plaintiffs are not entitled to any preliminary relief absent a showing that the students' placements are threatened.

The district court was correct to deny plaintiffs' preliminary in-junction request, which they assert pursuant to the IDEA's stay-put pro-vision. Plaintiffs simply haven't come anywhere close to showing an entitlement to preliminary injunctive relief under the stay-put provision.

Mendez's holding could not be clearer: the stay-put provision "en-titles families to automatic relief with respect to educational placement" only. 65 F.4th at 59. But where "there [is] no risk of the students losing their pendency placement[s]," then "an injunction under the IDEA's stay-put provision" is not warranted. Id. at 63 (internal citation and quotation marks omitted). Likewise, since plaintiffs have made no showing that the placements of these students were ever threatened, plaintiffs are not entitled to any preliminary injunctive relief under the stay-put provision. No matter what plaintiffs say, this case begins and ends with that principle. Not surprisingly, district courts have, time and again, applied the plain language of Mendez to deny pendency demands brought by plaintiffs' attorneys. As one judge recently noted: "[p]laintiffs' counsel has shopped [their pendency] argument[s] to vari-ous judges in this district over a dozen times, and have been told time and again that, at the preliminary injunction phase, the claim is merit-less." Nicholls v. Aviles-Ramos, 25-CV-7569 (JPO), 2025 U.S. Dist. LEXIS 211722, at *12 (S.D.N.Y. Oct. 27, 2025) (citing cases); see also, e.g., Fiallos v. Aviles-Ramos, 25-CV-7281 (JMF), 2025 U.S. Dist. LEXIS 206461, at *14 (S.D.N.Y. Oct. 20, 2025) (noting that "courts have rou-tinely denied [plaintiffs'] counsel's regular requests for emergency pre-liminary relief" but "[n]evertheless, they persist").[2]

This Court's holding in Mendez accords with the general principle that a preliminary injunction is simply not available where only money is at stake. See, e.g., JSG Trading Corp. v. Tray-Wrap, Inc., 917 F.2d 75, 79 (2d Cir. 1990). And that's all that this case is about. After all, plaintiffs are not seeking injunctive relief to secure a child's continued placement under the stay-put provision. Cf. Lillbask, 397 F.3d at 83 (recognizing that plaintiffs could secure child's continued placement in public school under the stay-put provision). Rather, plaintiffs purport to seek pendency determinations—that is, orders requiring DOE to pay for pendency tuition and associated services—and funding pursuant to such orders.

Thus, the relief that plaintiffs seek boils down to a demand for pay-ment from DOE, and plaintiffs cannot use a preliminary injunctive mo-tion to accelerate such payment, absent a showing that the student's placement is at risk. Plaintiffs can obtain injunctive relief for "educa-tional payments" only "if they can show that a delay or failure to pay has threatened [the] child's placement." Mendez, 65 F.4th at 59; accord Abrams v. Porter, No. 20-cv-3899, 2021

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[2] Notably, as set forth in DOE's motion for sanctions in *Fiallos*, since June 2023, plaintiffs' counsel has filed 77 motions for a preliminary injunction—nearly all of which have been denied, withdrawn, or denied as moot. *See Fiallos et al. v. Aviles- Ramos*, 25-cv-07281 (JMF) (SDNY Dkt. Nos. 57-2 and 71 at 22). Plaintiffs' lawyers also have multiple other appeals currently pending before this Court, raising the same issues. *See, e.g.*, *Thomas v. Banks*, No. 25-1451; *Ramos v. Aviles-Ramos*, No. 25-1321; *Bruckauf v. Aviles-Ramos*, No. 25-1355.

U.S. App. LEXIS 36362, at *6-7 (2d Cir. Dec. 9, 2021) (reaching the same conclusion in another ap-peal, also brought by plaintiffs' counsel). Absent such a showing, the stay-put provision does not "create an entitlement to immediate pay-ment or reimbursement." Mendez, 65 F.4th at 63.

The language of the stay-put provision, along with this Court's precedent addressing that provision, also shows why plaintiffs' assertion that they are entitled to late fees and interest as a component of pen-dency (App. Br. 44-47) is so misguided. There is nothing about a late fee that can be considered part of "maintain[ing] the child's educational sta-tus quo." Ventura de Paulino, 959 F.3d at 529. Rather, late fees are just contractual penalties that iBrain and its providers have devised to try to force DOE to pay them on their preferred timeline, contrary to Mendez. 65 F.4th at 63 (holding that absent a showing that a "delay or failure to pay has jeopardized [a] child's educational placement … the DOE is not obliged to circumvent its ordinary payment procedures"); see also Chaperon v. Banks, 24-CV-05135 (JAV), 2025 U.S. Dist. LEXIS 149231,
at *23-25 (S.D.N.Y. Aug. 4, 2025) (explaining why plaintiffs' demand for contractual late fees in connection with pendency "stands in direct

contradiction of" Mendez).[3] DOE is not a party to those contracts and had no say in negotiating them.

[3] *Mendez v. Aviles-Ramos*, No. 25-cv-1096 (CM), 2025 U.S. Dist. LEXIS 195004 (S.D.N.Y. Oct. 1, 2025) (App. Br. 46-47) does not support plaintiffs either. That case credits an IDEA plaintiff's demand for late fees under an SRO order on plaintiff's *Burlington-Carter* claim and expressly notes that the pendency context is meaningfully different. *Id.* at *14-15. And *Paulino v.*

Moreover, plaintiffs do not even offer a reason why such amounts would ever need to be “fast-track[ed]” by an injunction. Mendez, 65 F.4th at 63.

Of course, the inability to obtain a preliminary injunction regard-ing pendency is unequivocally not the end of a parent’s IDEA case. As this Court explained in Ventura de Paulino, a parent seeking reimburse-ment for their unilateral placement of their child in a private school “may obtain retroactive reimbursement for their expenses … if they are able to satisfy the three-factor Burlington-Carter test.” 959 F.3d at 536. And parents may seek pendency orders to secure funding reimburse-ment for their child’s current placement while the due process complaint

3 Mendez v. Aviles-Ramos, No. 25-cv-1096 (CM), 2025 U.S. Dist. LEXIS 195004 (S.D.N.Y. Oct. 1, 2025) (App. Br. 46-47) does not support plaintiffs either. That case credits an IDEA plaintiff’s demand for late fees under an SRO order on plaintiff’s Burlington-Carter claim and expressly notes that the pendency context is meaning-fully different. Id. at *14-15. And Paulino v. N.Y.C. Dep’t of Education, 22 Civ. 1865 (PAE), 2024 U.S. Dist. LEXIS 132633 (S.D.N.Y. July 24, 2024) (App. Br. 45) has

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N.Y.C. Dep’t of Education, 22 Civ. 1865 (PAE), 2024 U.S. Dist. LEXIS 132633 (S.D.N.Y. July 24, 2024) (App. Br. 45) has nothing to say about late fees or interest.

nothing to say about late fees or interest.[4] is being resolved. See Mendez, 65 F.4th at 60-61. Indeed, that is pre-cisely what plaintiffs did here, through the IDEA administrative process, and have obtained pendency orders with respect to at least 15 of the 18 students in this case.

And plaintiffs may always pursue preliminary relief under the tra-ditional three-part test—if they can make a showing of irreparable harm, likelihood of success on the merits, and that the balance of the equities favor them. See, e.g., Doninger, 527 F.3d at 47. Of course, plaintiffs here have abandoned any such efforts.

But what a parent cannot do is use a preliminary injunction mo-tion under the IDEA's stay-put provision to "fast-track" pendency relief, absent a showing that their child's placement is at risk. Mendez, 65 F.4th at 63. That is, without such a showing, a parent cannot "circumvent[]" the "ordinary … procedures" for IDEA claims. Id.

In short, the district court was correct to question whether there was any "daylight … between [plaintiffs'] application for injunctive relief and the

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[4] In any event, plaintiffs have made no showing that late fees were ever included within the operative pendency orders in the first place. While plaintiffs argue that the pendency orders for five students "explicitly require DOE to fund pendency per the terms of contracts" (App. Br. 46; id. at 46 n.1), plaintiffs do not assert that any pendency order explicitly requires DOE to pay late fees. Rather, plaintiffs are simply attempting to read unwritten funding requirements into the pendency orders. Cf. Chaperon, 2025 U.S. Dist. LEXIS 149231, at *22 ("Plaintiffs cannot read into the pendency orders additional requirements that the IHO neither considered nor ordered.").

Second Circuit's Mendez decision" (A64), and to conclude that there was no meaningful daylight, and thus that plaintiffs were not en-titled to any preliminary injunctive relief.

B. Plaintiffs' attempts to get past Mendez all fall flat.

Plaintiffs' only response to Mendez is to assert that they "are not asking for immediate funding of pendency" (App. Br. 29). Instead, plaintiffs try to reframe their claims as a request for pendency orders (id. at 30)—in essence, declaratory relief (see, e.g., id. at 21 (arguing that plaintiffs' requested relief "does not implicate a request for immediate payment … only a determination on what services constitute pendency and must be funded by DOE in the ordinary course"); see also id. at 22, 42 (characterizing plaintiff's motion for a preliminary injunction as requesting "a determination to declare iBRAIN as the [s]tudents' proper pendency placement")). This gambit is futile.

Mendez doesn't support a demand for preliminary declaratory re-lief on pendency, and neither does any other case.[6] Indeed, courts have even questioned whether preliminary declaratory relief is ever appropriate, in any context. See, e.g., Crocs, Inc. v. Jinjiang Hobibear Shoes & Clothing Co., Ltd., 25-CV-180

[6] For instance, the Third Circuit case M.R. v. Ridley Sch. District, 744 F.3d 112, 124 (3d Cir. 2014) (App. Br. 26, 41), does not address a motion for preliminary relief and simply held that "plaintiffs secured the right to reimbursement when the hearing officer ruled in their favor."

(JMF), 2025 U.S. Dist. LEXIS 101439, at *2-3 (S.D.N.Y. May 28, 2025).

Along the same lines, courts have clarified that plaintiffs don't even have standing to pursue an emergency motion if they are simply alleging "'bare procedural violation[s] divorced from any concrete harm.'" Mendez v. Aviles-Ramos, 25-cv-5746 (CM), 2025 U.S. Dist. LEXIS 214472, at *8 (S.D.N.Y. Oct. 30, 2025) (quoting TransUnion LLC v. Ramirez, 594 U.S. 413, 440 (2021)). Here, to the extent that plaintiffs are seeking purely declaratory relief, plaintiffs fail to show how such re-lief would have any bearing on "any concrete harm." Id. Moreover, as the history of this case demonstrates, IDEA administrative proceedings are well-suited to resolve disputes about pendency placement. The proper avenue to so do is not an emergency motion in federal court.

More fundamentally, any attempt to fast-track declaratory relief misunderstands the entire purpose of the stay-put provision, which is focused on continued student placement. After all, if "there [is] no risk of the students losing their pendency placement[s]," then "an injunction under the IDEA's stay-put provision" is not warranted. Mendez, 65 F.4th at 63 (internal citation and quotation marks omitted). If plaintiffs have no viable claim for immediate reimbursement—and they don't—there is no basis for the federal courts to bypass ongoing administrative pro-ceedings on pendency to consider plaintiffs' preliminary injunctive re-quest for declaratory relief, which is essentially academic.

The district court had good reason to understand that plaintiffs' claims essentially boiled down to a request for immediate payment, re-gardless of how plaintiffs tried to recast their claims (see App. Br. 31 (citing A84, 99-100)). Plainly, if there is no evidence that a student's placement is threatened—such that immediate payment is not war-ranted under Mendez—then there is no reason to think that the child's educational status quo risks interruption, and no basis for immediate injunctive relief at all.

Another theme of plaintiffs' argument is their notion that, once pendency is established, they are purportedly entitled to a federal court order directing DOE to "fund" pendency (App. Br. 2, 22; see also id. at 29, 30, 34, 42), even as plaintiffs concede that Mendez precludes claims for immediate payment (App. Br. 29). But DOE's "funding" of a pen-dency placement at a private school necessarily requires DOE to make payments, so plaintiffs are attempting to draw a distinction without a difference, in a contrived effort to do an end-run around Mendez. To the extent that plaintiffs are seeking money from DOE under the stay-put provision, Mendez firmly shuts the door on such a claim.

The cases that plaintiffs cite do not support them, either. Take Moonsammy v. Banks, 24-cv-2616 (PAE), 2024 U.S. Dist. LEXIS 99415 (S.D.N.Y. June 3, 2024), a case which plaintiffs repeatedly attempt to rely upon (App. Br. 30, 35, 36, 37, 39, 40, 44). Of course, Moonsammy is a district court case which is not binding on this Court. But in any event, plaintiffs misunderstand Moonsammy to stand for the proposition that they are entitled to immediate declaratory relief on pendency regardless of any showing of harm or risk to the students' placement (App. Br. 40). Not so. Moonsammy turned on a dispute about which prior administrative order governed DOE's pendency obligations. The district court recognized that in that situation, plaintiffs were entitled to a declaration as to which order was controlling—but, of course, not immediate payment, under Mendez. Moonsammy, 2024 U.S. Dist. LEXIS 99415 at *16-21.

Here, plaintiffs don't point to any disputes about which pendency order controls, so Moonsammy is entirely inapposite. Rather, what plaintiffs sought here was an immediate declaration of pendency via a preliminary injunction motion, before the administrative proceedings on pendency had even resolved and before DOE had even taken a posi-tion on that issue at the administrative level. Nothing in Moonsammy, or any other case, supports that request.

Nonetheless, plaintiffs strain to analogize this case to Moonsammy, and distinguish it from Mendez, arguing that DOE here has refused to acknowledge pendency (App. Br. 30). But that's not

correct, either. Indeed, DOE has already funded several of the students' pendency tuition, transportation, and nursing, at sums totaling over
$1.7 million as of November 2025 (SDNY Dkt. No. 39-1 (DOE status report)). This record shows that DOE complies with final, unappealed pendency orders—exactly as this Court's precedent requires, see Men-

dez, 65 F.4th at 59; Ventura de Paulino, 959 F.3d at 532, and precisely as plaintiffs have demanded (see A59 (seeking an injunction requiring DOE to "adher[e] to all final, unappealed administrative orders" for funding)). Crespo v. Aviles-Ramos, 25-cv-07563 (JAV), 2025 U.S. Dist. LEXIS 213720 (S.D.N.Y. Oct. 29, 2025) (App. Br. 19, 30, 37, 38, 39, 40
is also of no help to plaintiffs.. For one thing, like Moonsammy, Crespo is a non-precedential district court decision. And again, the facts are meaningfully different. In Crespo, the court declared that iBrain was the pendency placement of two students—but one of the students, V.P., al-ready had a pendency order for iBrain. Id. at *18-20. In this case, DOE has committed to processing pendency payments for all students with pendency orders, at least to the extent that pendency issues are not dis-puted in ongoing appeals (see SDNY Dkt. No. 39-1)—just as the Crespo court required with respect to V.P., ordering DOE to fund pendency tuition and transportation while the parent's appeal regarding pendency nursing costs was ongoing. Id. at *20.

As for the other student in Crespo, B.T., while that student did not yet have any pendency order, the court found that DOE nonetheless could not delay pendency implementation when DOE "has not proposed any alternative private placement." Id. at *13. Indeed, the court recog-nized that "DOE can determine how best to provide the pendency edu-cational program," but faulted DOE for "refus[ing] to offer an alterna-tive equivalent placement" to iBrain. Id. at *15. In this case, plaintiffs have made no showing that DOE has failed to propose an alternative placement for any of the plaintiff students. Indeed, at least eleven of those students—that is, more than half of the plaintiff students—have lost in their Burlington-Carter claims at the IHO level (see SDNY Dkt. No. 39-1 (discussing A.T., C.B., D.O., E.D.R., H.C., J.B, M.B., V.G., and Z.C.); SDNY Dkt. No. 41 at 2 (DOE letter to court discussing E.B. and R.P)), which would have required a showing on DOE's part that its pro-posed private placement was appropriate for these children.

As for Araujo v. New York City Department of Education, 20 Civ. 7032 (LGS), 2020 U.S. Dist. LEXIS 175767 (S.D.N.Y. Sept. 24, 2020)
(App. Br. 36-37), that decision pre-dates Mendez and thus has nothing to contribute to the question of how this Court's Mendez decision should be applied. The same is true of other pre-Mendez district court decisions cited by plaintiffs (App. Br. 23). And in any event, in Araujo, the parties agreed that the plaintiff students had pendency at iBrain. 2020 U.S. Dist. LEXIS 175767 at *9. Here, DOE continues to dispute some aspects of the pendency funding that plaintiffs seek, and to the extent that DOE does not dispute plaintiffs' requested funding, their claims are moot. See infra Point C.
A much closer district court analogy than Moonsammy, Crespo, or Araujo is Grullon v. Banks, 23-cv-5797, 2023 U.S. Dist. LEXIS 188079, at *14 (S.D.N.Y. Oct. 19, 2023), where the court correctly rec-ognized that an automatic injunction is not a "mechanism through which [p]laintiffs can seek a court order requiring DOE to acknowledge a pendency determination" immediately. In other

words, while "[p]laintiffs may wish for DOE to finalize students' pendency determi-nations within one day of filing a [due process complaint], the practical realities of bureaucratic administration all but assure that such timing is impossible." Id. at *16 (internal citation and quotation marks omit-ted).

Of course, if a student's placement was truly threatened, plaintiffs could secure preliminary injunctive relief under the stay-put provision. See, e.g., Lillbask, 397 F.3d at 83. In contrast, plaintiffs have not demonstrated any risk to the placement of the students, so this case falls squarely into the Mendez framework.

And while this Court need not reach this point—because Mendez forecloses plaintiffs' claims—plaintiffs are wrong to suggest that DOE's obligation to recognize their requested pendency placement ripened as soon as they filed their due process complaints (App. Br. 19). Not so. Rather, pendency is determined either by mutual consent or unappealed administrative order. See, e.g., Mendez, 65 F.4th at 59; Ventura de Paulino, 959 F.3d at 532. And as the record here shows, DOE adheres to final, unappealed pendency orders. What DOE does not do—and what plaintiffs ask of DOE—is to provide pendency funding, as demanded by plaintiffs, immediately upon the filing of a due process complaint. After all, the scope of pendency is often disputed (see, e.g. App. Br. 32 (noting that parties often dispute, among other things, whether pendency in-cludes "related services" or "additional fees" and whether "tuition in-creases" are included in pendency)).

Similarly, plaintiffs are also wrong to assert that the latest admin-istrative order for each student necessarily fully establishes pendency (App. Br. 4, 6, 33). Rather, the entire point of administrative pendency proceedings is to determine the scope of pendency. DOE prudently waits for a final pendency order—or at least, a clear narrowing of the disputed issues in a pendency appeal—before remitting payment, at least in the absence of a threat to a child's placement.

DOE's approach of waiting until pendency proceedings are re-solved to remit disputed payments makes good sense. After all, payments to private providers cannot be recouped even when, as happened in most of plaintiff students' cases here (see SDNY Dkt. No. 39-1; SDNY Dkt. No. 41 at 2), the IHO determines that DOE's proffered public school placement would have been appropriate. Ventura de Paulino, 959 F.3d at 535.

Moreover, IDEA plaintiffs are never entitled to prospective tuition payment, either under Burlington-Carter or the stay-put provision, but rather may be entitled to reimbursement of only past-due tuition and related expenses. Chaperon, 2025 U.S. Dist. LEXIS 149231 at *23-25. As this Court explained in Mendez, "DOE must first withhold payments that have actually accrued before Plaintiffs can seek those payments in court," and any claims for prospective funding are simply not ripe. 65 F.4th at 61.

All in all: plaintiffs cannot avoid the administrative process to ob-tain non-refundable public funding by running to court for emergency relief when there is no emergency. Despite the holding in Mendez, plain-tiffs are trying to abuse the IDEA's stay-put provision to force DOE to prioritize the processing and payment of their claims over those of thou-sands of other students and to obtain everything iBrain and its service providers seek without oversight, via preliminary injunction motion. This Court should reject this iteration of this gambit just as it did in Mendez.

C. Administrative developments after the district court's decision further undermine plaintiffs' preliminary injunction motion, because many of their claims for relief are now moot.

As explained above, the district court correctly denied plaintiffs' motion for a preliminary injunction. Subsequent administrative devel-opments only further show how meritless plaintiffs' motion is: plaintiffs have, by now, already obtained much of the relief that they seek in fed-eral court, through the IDEA administrative process, making their mo-tion largely moot.

Namely, plaintiffs brought this action seeking pendency determinations for 18 students and have since received such orders for at least 15 of those students: namely, A.C., A.T., C.B., D.O., E.D.R., H.C., L.C., L.S., M.B., M.C., S.C., S.J.D., V.G., Z.C., and J.B. See supra at 11 (discussing DOE's most recent status update to the court). Plaintiffs also seek pendency funding in accordance with pendency orders, and

DOE has already provided over $1.7 million in such funding. See supra at 11- 12.

Thus, with respect to plaintiffs' claims for declaratory relief for the students who have already obtained pendency orders, such claims are moot, which necessarily means that plaintiffs' motion for a preliminary injunction based on those claims is also moot. See, e.g., Page v. U.S. Agency for Global Media, 797 F. App'x 550, 557 (2d Cir. 2019) (citing Ruby v. Pan Am. World Airways, Inc., 360 F.2d 691, 691-92 (2d Cir. 1966)); see also, e.g., Davis v. Aviles-Ramos, 25 Civ. 7555 (KPF), 2026
U.S. Dist. LEXIS 2812, at *6 (Jan. 6, 2026) (finding plaintiffs' requests for preliminary relief with respect to pendency moot, and noting that "a federal court may only issue preliminary relief under Mendez if that re-lief remains outstanding").

After all, as Judge Failla recognized in yet another case seeking pendency determinations for iBrain students via a preliminary injunc-tion under the IDEA's stay-put provision, "the issuance of a pendency order in an administrative process moots a request for pendency in a judicial process." Davis, 2026 U.S. Dist. LEXIS 2812, at *6. Judge Failla expressed "bewilder[ment] as to why [p]laintiffs appear to think they are entitled to relief in the courts that they have already received admin-istratively." Id. at *7.

Moreover, the over $1.7 million in pendency funding that DOE has already paid, in accordance with the pendency orders, disproves plaintiffs' allegation that

DOE "fail[s] to make required payments for … unappealed, relevant administrative orders" for students' pendency placement (App. Br. 33). Cf. Ramos v. Banks, 24 Civ. 5109 (LGS), 24 Civ. 5136 (LGS), 2025 U.S. Dist. LEXIS 96389, at *12 (S.D.N.Y. May 21, 2025) ("DOE's full … payment belies [p]laintiffs' assertion."). Rather, DOE provides pendency funding for undisputed matters in accordance with its ordinary payment processes, and provides funding for matters being actively litigated on the administrative level once such disputes are resolved.

All in all, there is no emergency here that would warrant a prelim-inary injunction, and there never was.

CONCLUSION

This Court should affirm.

Dated: New York, New York
March 10, 2026

Respectfully submitted,
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PETITIONERS' REPLY BRIEF, DATED MARCH 31, 2025

25-2127

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

OLIVER BRUCKAUF, as Parent and Natural Guardian of E.B., and OLIVER BRUCKAUF Individually 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., CRYSAL CROSLEY, individually and as parent and natural guardian of Z.C., 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 and SCOTT THOMAS, individually and as parents and natural guardians of A.T., 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., and PATRICK DONOHUE, individually and as parent and natural guardian of S.J.D.,

Plaintiffs-Appellants,

against

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

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR PLAINTIFFS – APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Rules

Regulations

PRELIMINARY STATEMENT

This case involves the New York City Department of Education's ("DOE") failure to promptly fund pendency placements for disabled students entitled to a free appropriate public education ("FAPE"). The DOE regularly delays compliance with the Individuals with Disabilities Education Act ("IDEA"), resisting obligations in administrative and federal proceedings by misapplying established law.

Under IDEA, the DOE's pendency obligations are triggered automatically when a parent files a Due Process Complaint ("DPC") challenging an Individualized Education Program ("IEP"). The law, including Mendez v. Banks, 65 F.4th 56 (2d Cir. 2023), confirms no impartial hearing officer ("IHO") order is needed, yet the DOE refuses to recognize its responsibilities until such an order is issued. Afterward, it further delays funding and resists judicial enforcement, incorrectly labeling these actions as requests for "expedited" payment and misusing court decisions. Without intervention, this pattern is likely to persist.

The DOE makes its untenable position plain by arguing that the IDEA's stay-put provision "is plainly about continuous placement of the child—and all the plaintiff students have maintained a continuous placement at their parents' preferred school, iBrain." [DktEntry 31.1 at 15]. To support this argument, the DOE must ignore well-established case law. This Court has held that funding goes hand-in-hand with placement in a private educational program. See Zvi

D. by Shirley D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982).

This principle was reaffirmed in Mendez, 65 F.4th at 62. The Court noted that a school district must continue funding an educational placement made by the agency and consented to by the parent before a due-process hearing request, which is implicit in maintaining the status quo. Zvi D. by Shirley D., 694 F.2d at 906. Without funding, there is no placement. If the DOE indefinitely withholds funding, a student would have no legal recourse, contrary to the holding in Mendez.

The DOE disputes pendency amounts, labels it solely a financial issue, and argues that Mendez prevents any relief. This approach attempts to use Mendez as a shield against judicial review of its delays in meeting pendency obligations, especially for students attending iBRAIN.

As outlined in the Plaintiffs' opening brief and herein, the DOE's efforts must fail. The DOE compounds its misapplication of the pendency provision as follows:

> [P]laintiffs are also wrong to assert that the latest administrative order for each student necessarily fully establishes pendency. Rather, the entire point of administrative pendency proceedings is to determine the scope of pendency. DOE prudently waits for a final pendency order—or at least, a clear narrowing of the disputed issues in a pendency appeal—before remitting payment, at least in the absence of a threat to a child's placement.

[DktEntry 31.1 at 28–29] (internal citation omitted).

A pendency order is not required to establish pendency. The Second Circuit has ruled that a final administrative decision supporting a parent's choice of school qualifies as "placement" under IDEA's pendent placement provision. Bd. of Educ. of Pawling Cent. Sch. Dist. v. Schutz, 290 F.3d 476, 485 (2d Cir. 2002). Once a private school is designated as a student's placement, it remains the pendency placement until changed by an administrative ruling.

Pendency attaches as soon as a due-process complaint is filed. Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 445 (2d Cir. 2015). Under 20 U.S.C. § 1415(j), a child stays in their current educational placement during proceedings. The stay-put provision obligates districts to fund the last agreed-upon placement until all legal processes conclude. Avaras v. Clarkstown Cent. Sch. Dist., No. 15 CV 9679 (NSR), 2018 WL 4103494, at *4 (S.D.N.Y. Aug. 28, 2018); T.M. ex rel. A.M. v. Cornwall Cent. Sch. Dist., 752 F.3d 145, 171 (2d Cir. 2014).

The DOE's obligation to fund the pendency placement begins upon the filing of a DPC, not upon the entry of a pendency order. Doe v. E. Lyme Bd. of Educ., 962 F.3d 649, 659 (2d Cir. 2020) ("We again emphasize that once a party has filed an administrative due process complaint, the IDEA's stay-put provision provides that 'during the pendency of any proceedings conducted pursuant to [20 U.S.C. § 1415],... the child shall remain in the then-current educational placement of the child'" (quoting 20 U.S.C. § 1415(j)) (alteration in original) (emphasis added)). The DOE should not wait for a formal order from a hearing officer before implementing a student's pendency placement. See Letter to Goldstein, 60 IDELR 200 (OSEP 2012). As Judge Vargas recently found in Crespo v. Aviles-Ramos, No. 25-CV-07563 (JAV), 2025 WL 3022389, at *7 (S.D.N.Y. Oct. 29, 2025), DOE's legal obligations under § 1415(j) are not dependent on the parties obtaining pendency orders in the administrative proceedings.

Compounding the DOE's misunderstanding of pendency is its misreading of the Mendez ruling. In that case, this Court held that the following two propositions are true: "(1) § 1415(j) functions as an 'automatic injunction,' with no requirement to show irreparable harm in order to maintain an educational placement, and (2) funding goes hand-in-hand with placement." Mendez, 65 F.4th at 62 (internal citation and quotation marks omitted).

This Court then set forth the main thrust of its decision: "Although propositions (1) and (2) are both true, and the DOE is obliged to fund their children's educational placements for the duration of the proceedings, that does not mean that § 1415(j) requires the DOE to automatically fast-track funding for the educational placements. Nothing in the text of § 1415(j) goes that far." Id. at 63 (emphasis added). This Court continued: "The IDEA's stay-put provision does not create an entitlement to immediate payment or reimbursement" and "the statute does not require circumvention of ordinary payment procedures." Id. (emphasis added). The holding does not preclude entitlement to funding under "ordinary payment procedures."

Important to this Court's holding was the finding that the DOE did not dispute pendency. This Court noted:

> The DOE has repeatedly and unequivocally stated that it intends to continue paying for the children's schooling at iBrain during the pendency of the underlying FAPE proceedings. ... In any case, we do not determine the justiciability of a dispute based on a purely speculative gamble about a defendant's future decisions.

Id. at 61–62.

The Court's decision in Mendez does not cover funding made in the ordinary course of business or situations where the DOE disputes pendency. When the DOE concedes pendency and commits to paying, parents cannot seek injunctions for immediate payment. If the DOE challenges pendency, there are no payments, and an injunction is appropriate to establish entitlement. Thus, Mendez only applies when pendency payments are forthcoming; if disputed, it is irrelevant. Mendez does not apply to this case for two reasons: (1) Plaintiffs are not seeking fast-track or immediate payment, and (2) the DOE is disputing pendency.

First, regardless of how many times the DOE states otherwise, the Plaintiffs are not seeking fast-track pendency payments. The DOE has concededly withheld all funding until a pendency order is entered, and then, as here, either continues to delay payment or only partially pays amounts it unilaterally decides it owes. The DOE concedes it has paid for only the first five months of the school year, through November 2025. [Dkt.Entry 31.1 at 13–14]. Payments for the remainder of the school year remain unpaid. The time to "fast-track" payments has long since passed. Furthermore, despite some partial payments, the DOE has, to date, failed to fully fund pendency because it has not paid the late fees accrued under the relevant contracts. These late fees are not separate items, but part and parcel of the tuition and transportation services, as argued further below.

Second, Mendez does not apply because the DOE is disputing pendency. While the DOE argues it has provided "substantial pendency funding" [Dkt.Entry 31.1 at 11], it does not argue, nor can it, that it has paid all amounts owed. The DOE concedes that while it has made partial payments, "additional disputes about the scope of pendency funding continue to play out through the administrative process." [Id. at 13–14].

Moreover, as detailed below and in Plaintiffs' opening brief, late fees for tuition and transportation remain unpaid because the DOE disputes them. The DOE's argument that only funding—not placement—is at issue does not preclude Plaintiffs' claim for injunctive relief under Mendez. The decision in Mendez confirms that "funding goes hand-in-hand with placement." 65 F.4th at 62. Parents were denied only "fast-track" payments.

Additionally, the DOE misinterprets Mendez and disregards relevant case law to avoid its pendency obligations by delaying or withholding funding for students' placements. Without intervention, this pattern will persist to the detriment of disabled students.

ARGUMENT

I. THE MENDEZ STANDARD

DOE routinely misapplies Mendez in cases involving iBRAIN students seeking preliminary injunctions, as did the district court here. Plaintiffs are requesting both a correct outcome and clarification of the Mendez standard. The district court denied Plaintiffs' motion for preliminary injunction because Plaintiffs failed to establish irreparable harm. [A-63]. Mendez does not require proof of irreparable harm for pendency placement cases. Instead, the IDEA's stay-put provision supplants traditional injunction analysis, and irreparable harm applies only to immediate-payment cases. The district court incorrectly reduced a three-part analysis to one irrelevant question, warranting reversal.

A. Mendez Establishes a Three-Track Framework—Not a Single Irreparable Harm Standard

Mendez organizes the legal landscape governing IDEA pendency enforcement into three distinct analytical tracks, each with its own standard and predicate. The district court's ruling conflated all three.

Track One: Automatic Injunction as to Pendency Placement

The first and foundational rule, unchanged by Mendez, is that § 1415(j) "is, in effect, an automatic preliminary injunction." As Mendez expressly reaffirmed, the stay-put provision "substitutes an absolute rule in favor of the status quo — that is, the maintenance of a student's then-current educational placement — for the standard preliminary injunction analysis involving irreparable harm, the likelihood of success on the merits, and the balance of hardships." Mendez, 65 F.4th at 62 (quoting Zvi D. by Shirley D., 694 F.2d at 906) (emphasis added). Under this track, a parent who seeks a declaration of their child's pendency placement and an order requiring the DOE to fund that placement in the ordinary course "need not prove irreparable harm." Ventura de Paulino v. New York City Dep't of Educ., 959 F.3d 519, 529 (2d Cir. 2020). The statute itself provides the entitlement, and the Court must grant the automatic injunction without further inquiry.

The automatic character of the stay-put provision was recognized by the Supreme Court in Honig v. Doe, 484 U.S. 305, 323 (1988), which confirmed that § 1415(j) reflects Congress's "flat prohibition against the exclusion of disabled students" during the pendency of proceedings. No balancing test, no showing of harm, no judicial discretion—the obligation is statutory and self-executing.

Mendez did not disturb this rule. The Mendez court affirmed that "propositions (1) and (2) are both true"— meaning (1) § 1415(j) operates as an automatic injunction with respect to educational placement, and (2) "funding goes hand-in-hand with placement." 65 F.4th at 63. The DOE "is obliged to fund their children's educational placements for the duration of the proceedings." Id. Track One thus encompasses both the declaration of placement and the concomitant ordinary-course funding obligation. No irreparable harm is required under Track One.

Track Two: Automatic Injunction as to Pendency Payments Where Placement Is at Risk
Mendez carved out a subset of the automatic injunction framework for a specific scenario: where a parent seeks an injunction requiring payment, and where the delay or failure to pay has "jeopardized" or "threatened" the child's pendency placement. Mendez, 65 F.4th at 58, 63. In that scenario, the automatic injunction framework still applies—but the parent must make "such a showing" to trigger it. Id. at 63.

Critically, this showing—that the placement is "at risk"—differs from the traditional preliminary injunction showing of "irreparable harm." It is a predicate specific to the statutory scheme, asking whether the functional purpose of the automatic injunction (maintaining the educational status quo) is endangered. See Abrams v. Porter, No. 20-3899-CV, 2021 WL 5829762, at *2 (2d Cir. Dec. 9, 2021) (holding injunction unwarranted where "both sides agreed that there was no risk of the students losing their pendency placement"). Track Two, therefore, remains within the automatic injunction framework; it simply requires a particularized showing before extending it to accelerated payment.

Track Three: Traditional Preliminary Injunction Standard as Alternative Relief

Only in Section II.B of its opinion—expressly labeled "Traditional Preliminary Injunction Standard" and introduced as an "alternative" to the automatic injunction analysis—did Mendez consider whether the plaintiffs satisfied the four-factor test that includes irreparable harm.[1] Mendez, 65 F.4th at 62 ("In the alternative, they argue that the district court abused its discretion in denying a preliminary injunction under the traditional standard."); id. at 63–64 (addressing the traditional standard in Section II.B). Track Three is available where a parent cannot obtain automatic relief under Tracks One or Two — for instance, where the request is for immediate payment not tied to placement jeopardy. Only under Track Three is "irreparable harm" a required element.

B. Plaintiffs' Motion Belongs on Track One — Not Track Three

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[1] And, presumably, the only reason the Court discussed the traditional preliminary injunction standards—including irreparable harm—is that the Plaintiffs in Mendez argued that they met the traditional preliminary injunction standards as an alternative to the stay-put provision's automatic injunction.

The district court denied the Plaintiffs' motion, finding that the "irreparable harm" requirement was not met. This element belongs to Track Three. Plaintiffs' motion did not seek immediate payment. Plaintiffs sought (1) a declaration that the Students' pendency placement is at iBRAIN, with private transportation and nursing services, where applicable, and (2) an order requiring the DOE to fund that placement in the ordinary course.

That is precisely the relief governed by Track One: an automatic injunction declaring and funding a pendency placement, not an order to circumvent ordinary payment procedures. Because § 1415(j) operates as "an automatic preliminary injunction" that "substitutes an absolute rule in favor of the status quo" for the traditional preliminary injunction analysis, Mendez, 65 F.4th at 62 (quoting Zvi D. by Shirley D., 694 F.2d at 906), Plaintiffs' entitlement to that declaration does not depend on any showing of irreparable harm, likelihood of success on the merits, or balance of hardships. The statute provides the rule; the only inquiry is whether the statutory predicate is met—that is, whether the Students have a "then-current educational placement" that must be maintained. Here, the unappealed administrative orders obtained for each Student conclusively establish the predicate. See 34 C.F.R. § 300.518(d); Board of Educ. of Pawling Central School Dist., 290 F.3d at 482.

By importing the "irreparable harm" requirement from Track Three into a Track One analysis, the District Court committed an error of law reviewable de novo. Mendez, 65 F.4th at 62 (reviewing de novo); Ventura de Paulino, 959 F.3d at 529 ("Questions of law decided in connection with requests for preliminary injunctions" are reviewed de novo).

C. Mendez's Own Structural Logic Confirms the District Court's Error

The Mendez Court's decision to address the traditional preliminary injunction standard only "in the alternative" — and only in Section II.B, after completing the automatic injunction analysis in Section II.A — is dispositive of the structural question. Had this Court understood the irreparable harm standard to govern placement declarations, Section II.B would have been the beginning of the analysis, not an alternative afterthought. Instead, this Court treated the traditional standard as a fallback available to plaintiffs who could not avail themselves of the automatic injunction. The clear implication is that plaintiffs who can avail themselves of the automatic injunction— that is, those seeking placement declarations and ordinary-course funding—need not satisfy the traditional preliminary injunction standard at all.

That structural reading is confirmed by Mendez's reasoning in Section II.A, which rejected the plaintiffs' claim for immediate payment by holding that § 1415(j) does not require the DOE to "automatically fast-track funding." Mendez, 65 F.4th at 63. The word "automatically" is doing significant work: the Court's concern was that the DOE was being forced to circumvent "ordinary payment procedures." Id. By contrast, an order declaring placement and requiring ordinary-course payment does not compel the DOE to bypass anything—it compels compliance with what the statute already requires. Such an order is squarely within the automatic injunction framework that the Court preserved.

D. Some Post-Mendez District Court Decisions Confirm No Irreparable Harm Showing Is Required for a Placement Declaration

This Court need look no further than its own district courts' post-Mendez decisions to confirm that the District Court below was wrong. In Crespo, 2025 WL 3022389, at *19–20, Judge Vargas expressly held that parents are "entitled to a preliminary injunction requiring the [DOE] to fund" pendency placements, declaring iBRAIN as the students' pendency placement and ordering ordinary-course payment — without any finding of irreparable harm or placement jeopardy. The Crespo court recognized that "DOE's legal obligations under Section 1415(j) are not dependent upon parties obtaining pendency orders in administrative proceedings," id. at 19 (internal citations omitted), and proceeded to grant the declaration and ordinary-course funding order as a matter of course.

Similarly, in Moonsammy v. Banks, No. 24 CIV. 2616 (PAE), 2024 WL 2831042, at *1 (S.D.N.Y. June 3, 2024), appeal withdrawn, No. 24-1814, 2024 WL 4527106 (2d Cir. Aug. 21, 2024), the Court granted a preliminary injunction declaring the scope of the student's pendency placement and ordering the DOE to fund tuition and transportation in the ordinary course — again, without requiring a showing of irreparable harm. In accordance with Mendez, the Court declined to order immediate payment. Moonsammy, 2024 WL 2831042, at *1. The distinction between ordinary-course funding (automatic, no irreparable harm required) and immediate payment (requires showing of placement jeopardy) is precisely the distinction Plaintiffs draw here, and precisely the distinction the District Court failed to observe.

E. The District Court's Error Transforms Mendez Into a Tool for Perpetual Evasion

The district Court's ruling produces a result that no court—including the Mendez Court—endorsed: a school district that openly refuses to recognize its automatic pendency obligation, declines to issue any payment, and conditions acknowledgment of that obligation on receipt of a formal administrative pendency order it does not contest, may nonetheless avoid judicial intervention simply by arguing the parent has not shown "irreparable harm." This interpretation renders the automatic injunction character of § 1415(j) a nullity. If a parent must show irreparable harm to obtain a placement declaration, the "absolute rule in favor of the status quo" that Zvi D. identified—and that Mendez preserved—has no meaning. Zvi D. by Shirley D., 694 F.2d at 906.

Mendez was careful to ground its holding in the distinction between placement and payment, specifically because it recognized that eliminating the automatic character of the placement injunction would "frustrat[e] the fiscal policies of participating states" in the wrong direction—by removing the predictability that the stay-put provision is designed to guarantee. Mendez, 65 F.4th at 63 (quoting Ventura de Paulino, 959 F.3d at 535). The district court's ruling frustrates those policies in precisely the opposite way: by making the pendency placement declaration contingent on a showing that it was never designed to require, the Court creates a perverse incentive for school districts to withhold payment, dispute placement, and force litigation—secure in the knowledge that parents must first prove their children are "irreparably harmed" before the statute's automatic protection kicks in. That is not what Congress enacted, nor is it what Mendez held.

For these reasons, this Court should hold that the District Court applied the wrong legal standard, reverse the denial of the preliminary injunction, and remand with instructions to grant a declaration of the Students' pendency placement at iBRAIN with private transportation and nursing services, and to order the DOE to fund that placement in the ordinary course.

II. THE DISTRICT COURT ERRED IN DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

This Court reviews a district court's denial of a preliminary injunction for abuse of discretion and reviews any questions of law underlying that determination de novo. Ventura de Paulino, 959 F.3d at 529. The district court's determination of which legal standard governs—specifically, whether § 1415(j)'s automatic injunction or the traditional preliminary injunction standard applies—is a question of law reviewed de novo. Mendez, 65 F.4th at 62.

A. The DOE's Pendency Obligation is Triggered by the Filing of a DPC, Without the Need for a Pendency Order

Each Student in this case has an administrative order establishing iBRAIN as their pendency placement. The DOE does not dispute this placement. Each Plaintiff also filed a DPC in late June or early July, triggering the DOE's pendency obligations. This Court made clear: "an educational agency's obligation to maintain stay-put placement is triggered when an administrative due process proceeding is initiated." Doe, 790 F.3d at 445. And once more: "We again emphasize that once a party has filed an administrative due process complaint, the IDEA's stay-put provision provides that 'during the pendency of any proceedings conducted pursuant to [20 U.S.C. § 1415],... the child shall remain in the then-current educational placement of the child.'" Doe, 962 F.3d at 659 (quoting 20 U.S.C. § 1415(j)) (alteration in original) (emphasis added).

Here, the DOE refutes this well-established, binding law, arguing that "pendency is determined either by mutual consent or unappealed administrative order," and then claims it "adheres to final, unappealed pendency orders." [DktEntry 31.1 at 28]. In this way, the DOE twists the stay-put provision beyond recognition. As Plaintiffs outlined in their Opening Brief, each student has a final order establishing pendency: either a prior FOFD or a prior SRO decision. Established authority clearly states that pendency is automatic, without the necessity of a pendency order. For each student, pendency has already been established.

The DOE makes the breathtaking argument that final, binding prior orders do not establish pendency until a pendency order is established, claiming that "the entire point of administrative pendency proceedings is to determine the scope of pendency." [Id.]. Again, this is a blatant defiance of established precedent that pendency is not dependent on pendency orders. The DOE cannot grant itself a stay by waiting for a pendency order (and then, as is its usual practice, refuse to implement it). Moreover, it is impossible to have a student without a pendency placement. See Gabel ex rel. L.G. v. Bd. of Educ. of Hyde Park Cent. Sch. Dist., 368 F. Supp. 2d 313, 324–25 (S.D.N.Y. 2005). The DOE now argues that students have no pendency until the IHO enters a pendency order, and the DOE agrees with that pendency order. Pendency is automatic, and it ripens as soon as a parent files a DPC. The DOE cannot unilaterally change the law to delay its pendency obligations for months, if not years.

Yet the DOE not only ignores this irrefutable legal principle, but also congratulates itself for doing so. It states it "prudently waits for a final pendency order—or at least, a clear narrowing of the disputed issues in a pendency appeal—before remitting payment ...." [Id. at 28–29]. The DOE then claims this practice "makes good sense" because it cannot recoup pendency payments made if it later prevails on the merits of its FAPE claim. [Id. at 29].

The legal principle that a school district cannot claw back pendency funding if it later prevails on the merits protects disabled students and their parents, the IDEA's underlying purpose. The DOE cannot circumvent this principle by defying binding laws and granting itself a stay of pendency until a pendency order is entered and fully litigated.

The DOE's solution to avoid its pendency obligation is simple: provide a FAPE in a public setting. If the DOE believed it was providing a FAPE, it would not need to dispute pendency. Its refusal to either provide a FAPE or fund the private pendency placement is the precise conduct the IDEA's stay-put provision was designed to prevent. See 20 U.S.C. § 1415(j); Zvi D. by Shirley D., 694 F.2d at 906. See also Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter, 510 U.S. 7, 15 (1993) (public educational authorities that "want to avoid reimbursing parents for the private education of a disabled child can give the child a free appropriate public education in a public setting").

The DOE then cites Grullon v. Banks, No. 23-CV-5797 (JGLC), 2023 WL 6929542, at *6 (S.D.N.Y. Oct. 19, 2023): "Although Plaintiffs may wish for DOE to finalize students' pendency determinations within one day of filing a [due process complaint], the practical realities of bureaucratic administration all but assure that such timing is impossible." [DktEntry 31.1 at 27].

First, the DOE's own General Counsel, Liz Vladek, refuted this statement in sworn testimony before the New York City Council on January 30, 2025, explaining that once the implementation team authorizes a payment, the matter is sent to the division of financial operations, which "is getting payments out the day they receive our authorization or within a day." [2]

Second, the DOE's reliance on the "practical realities of bureaucratic administration" to excuse indefinite delay in funding pendency placements is squarely foreclosed by this Court's decisions in Mendez and Doe v. E. Lyme. Neither case recognized administrative convenience as a defense to the automatic stay-put obligation. Mendez, 65 F.4th at 63; Doe, 962 F.3d at 659. The DOE may not invoke the complexity of its own payment systems as a shield against compliance with a statutory obligation that Congress made automatic.

B. Mendez Does Not Apply in this Case

As outlined in Argument I above, Mendez does not apply to this case for two independent reasons: (1) Plaintiffs do not seek fast-track or accelerated

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[2] See https://citymeetings.nyc/meetings/new-york-city-council/2025-01-30-0100-pm-committee-on education/ chapter/ does-current-process-for-paying providers/; https://citymeetings.nyc/meetings/new-york-city-council/2025-01-30-0100-pm-committee-on-education/chapter/timeline-expectations-for-non-delayed-payments.

payment, but only an order declaring their pendency placement and directing ordinary-course funding; and (2) the DOE actively disputes pendency, which takes this case outside Mendez's factual predicate. See supra Argument I.B–C. The DOE's repetition of its Mendez argument in Appellee's brief does not make it any more correct. We address each of the DOE's specific mischaracterizations in turn.

DOE claims that injunctive relief is improper because only money is at stake, arguing that "plaintiffs are not seeking injunctive relief to secure a child's continued placement under the stay-put provision." [DktEntry 31.1 at 17]. In fact, that is exactly what Plaintiffs are seeking. The DOE continues to refuse to acknowledge that placement and funding go hand in hand, instead seeking to draw a false distinction between the two.

The DOE illustrates its misunderstanding of Mendez: "the relief that plaintiffs seek boils down to a demand for payment from DOE, and plaintiffs cannot use a preliminary injunctive motion to accelerate such payment." [Id.] (emphasis added). And again, "what a parent cannot do is use a preliminary injunction motion under the IDEA's stay-put provision to 'fast-track' pendency relief, absent a showing that their child's placement is at risk." [Id.]. The DOE ignores the fact that these are two different things: entitlement to funding and the acceleration or fast-tracking of payment. This is precisely the distinction Mendez made, which the DOE lost.

This Court held unequivocally that funding goes hand-in-hand with placement in a private educational program. See Zvi D. by Shirley D., 694 F.2d at 906.

Mendez reaffirmed this principle. 65 F.4th at 62. Without funding, there was no placement. No matter how many times the DOE tries to say otherwise, this Court has never divorced placement from funding. Indeed, the failure to fund constitutes an outright denial of pendency. This Court has never, in Mendez or otherwise, held that injunctive relief is not available to a parent to obtain entitlement to pendency, which includes funding.

The DOE assails Plaintiffs' argument that the DOE is required to fund pendency: "DOE's 'funding' of a pendency placement at a private school necessarily requires DOE to make payments, so plaintiffs are attempting to draw a distinction without a difference, in a contrived effort to do an end-run around Mendez. To the extent that plaintiffs are seeking money from DOE under the stay-put provision, Mendez firmly shuts the door on such a claim." [DktEnty 31.1 at 23]. Again, the DOE either misunderstands or misstates Mendez. Mendez only precludes immediate payment, and that only when the DOE does not dispute pendency. Here, the DOE disputes pendency, and Plaintiffs seek funding in the ordinary course. Mendez simply does not apply, no matter how many times the DOE cites it.

While arguing that Mendez precludes injunctive relief when money is involved, the DOE has also argued that the Plaintiffs are not entitled to declaratory relief. The DOE contends: "Mendez doesn't support a demand for preliminary d eclaratory relief on pendency, and neither does any other case." [Dkt.Entry 31.1 at 21].

First, courts in this circuit have granted preliminary declaratory relief, as set forth below. Further, the DOE reduces Plaintiffs' claim to declaratory only, although Plaintiffs made clear: "Because funding goes hand in hand with pendency placement, Plaintiffs-Appellants were also entitled to an order requiring DOE to fund the Students' pendency placements..." [Dkt.Entry 24.1 at 22]. Plaintiffs later state they seek a declaration of the scope of pendency owed "and funding for these programs . . . ." [Id. at 42]. The conclusion of Plaintiffs' opening brief states, in pertinent part, that they seek "an order declaring that the Students' pendency is at iBRAIN, with special transportation and nursing services, where applicable, and requiring DOE to fund those pendency placements in the ordinary course..." [Id. at 47]. The DOE argues that "any attempt to fast-track declaratory relief misunderstands the entire purpose of the stay-put provision " [DktEntry 31.1 at 22]. In fact, it is the DOE that, again, misunderstands the stay-put provision. There is no need to "fast-track" it, because it is automatic. Students are entitled to stay put, and the DOE is responsible for funding the pendency placement, instantaneously upon the filing of a DPC. The DOE's modus operandi and stated policy is to ignore this black-letter law and dispute pendency in every iBRAIN case. Davis v. Aviles-Ramos, No. 25-cv-07555 (KPF) (S.D.N.Y.) (ECF No. 28 at 3). Without this Court's intervention, the DOE will continue to do so.

The DOE cites cases in which iBRAIN parents' motions for preliminary injunctions were denied.

[DktEntry 31.1 at 16]. However, it then attempted to distinguish cases in which preliminary injunctions were granted to the iBRAIN parents.

DOE attempts to distinguish Moonsammy by noting that the pendency dispute in that case was different from that here. [DktEntry 31.1 at 23–24]. The DOE ignores the holding in that case, which was that "[b]ecause the stay-put provision operates as 'an automatic preliminary injunction,'" the Court found, over the DOE's objection, that the parents "are entitled to a preliminary injunction requiring the Department to fund the services granted by SRO Bates's decision—namely, A.M.'s (1) tuition and (2) transportation to and from school." Id. at 20. This contradicts the DOE's argument that injunctive relief is never permitted on pendency grounds.

Notably, the DOE has argued that it has not refused to acknowledge pendency because it has partially paid. [DktEntry 31.1 at 24–25]. However, it has acknowledged that it continues to dispute the scope of pendency. [Id. at 14]. The stay-put provision does not entitle students to partial payment, in amounts the DOE unilaterally determines it must pay, and when it determines it will pay. It entitles students to full funding for their placement, full stop.

The DOE also attempts to distinguish Crespo. First, the DOE acknowledges that the Crespo "court declared that iBrain was the pendency placement of two students . . . ," exactly what it argues here is not allowed. [DktEntry 31.1 at 25]. It then, remarkably, argues, as the Court ordered in Crespo regarding one student, that "DOE has committed to processing pendency payments for all students with pendency orders, at least to the extent that pendency issues are not disputed in ongoing appeals . . . ." [Id.]. The problem is that the DOE disputes the pendency owed to all students and makes only partial payments in amounts it unilaterally deems appropriate. This does not comply with Crespo.

The DOE then misstates Crespo further regarding the second student. The DOE claims Crespo holds that the DOE may not delay pendency payments when it "has not proposed any alternative private placement," (quoting Crespo at *13), suggesting that if it offers an alternative placement, it may deny pendency funding. [DktEntry 31.1 at 26]. The DOE then erroneously places the burden on Plaintiffs, arguing that they have not shown that the DOE did not offer an alternative placement, apparently meaning that it can deny pendency funding to whatever extent it chooses. This is pure subterfuge.

The Crespo court was responding to the DOE's reliance on Ventura de Paulino, and stated that "nothing in De Paulino suggests that DOE can simply refuse to fund a student at their prior school and simultaneously refuse to offer an alternate equivalent placement." Crespo at *15. Here, DOE just finished arguing that it recognized pendency at iBRAIN by making partial payments, but now argues under Crespo that it may reject pendency so long as Plaintiffs do not prove that DOE failed to offer an alternative pendency placement. DOE has simply rendered the Crespo ruling unrecognizable.

More importantly, DOE completely bypasses the language Plaintiffs quote in their brief:

> "It is well established that DOE's legal obligations under Section 1415(j) are not dependent on parties obtaining pendency orders in administrative proceedings. Indeed, students may seek injunctive relief in federal Court to enforce their rights under the stay-put provision without first seeking a pendency order at the administrative level at all."

[DktEntry 24.1 at 30–31].

As DOE has made clear to this Court, it only acknowledges pendency when a student has a pendency order. And even then, without court intervention, it unilaterally determines how much pendency to fund and when. This blatantly violates § 1415(j) and binding precedent—and has caused numerous federal court litigations.

The DOE again contradicts itself by attempting to distinguish Araujo v. N.Y.C. Dep't of Educ., 2020 U.S. Dist. LEXIS 175767 (S.D.N.Y. Sep. 24, 2020), on the ground that, in that case, it agreed that iBRAIN was the students' pendency. [DktEtry 31.1 at 26-27]. The DOE now highlights that it disputes pendency here, in which case Mendez does not apply. The DOE has repeatedly contradicted itself in challenging the Plaintiffs' arguments.

The DOE argues that the Parents are not without a remedy, citing De Paulino for the proposition that parents can obtain funding by satisfying the Burlington/Carter test. [DktEntry 31.1 at 19]. In other words, the parents can win their case on the merits. This ignores the entire point of pendency: pendency placement is supposed to be funded while the parents are litigating their case on the merits. The DOE may not like that part of the law, but it is the law.

The DOE also notes that Plaintiffs can obtain pendency orders. [DktEntry 31.1 at 19-20]. Aside from the well-established principle that pendency attaches without the necessity of a pendency order, discussed above, the DOE fails to disclose that even when parents obtain pendency orders, the DOE still refuses to fund pendency without court intervention. This includes this case: the DOE argues that "many . . . claims" are moot because several students have pendency orders, [DktEntry 31.1 at 30–32] (addressed below), and then concedes that it is disputing the scope of pendency. The DOE seems to adopt whatever facts support a particular argument, even if it asserts conflicting facts later in the same brief. Moreover, the DOE also ignores longstanding precedent that exhaustion is not required in pendency cases. See, e.g., Ventura de Paulino, 959 F.3d at 531 (holding a case involving a violation of the IDEA's pendency provision is an exception to the exhaustion requirement).

C. Plaintiffs' Claims Are Not Moot

A case becomes moot only when the allegedly wrongful behavior cannot reasonably be expected to recur. Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 189 (2000). The burden rests on the DOE to demonstrate mootness.

Id. The DOE cannot meet that burden: it concedes that it continues to dispute the scope of pendency for every student in this case, making recurrence of the challenged conduct not merely possible but ongoing.

The DOE has argued that the case is moot, but its own assertions defeat that claim. The DOE argues that Plaintiffs "already obtained much of the relief that they seek in federal court, through the IDEA administrative process, making their motion largely moot." [DktEntry 31.1 at 30] (emphasis added). Thus, it conceded that the case is not moot.

The DOE argues that some students have obtained pendency orders, rendering the declaratory portions of those students' claims moot. [DktEntry 31.1 at 30]. First, as discussed above, the DOE's assertion that pendency orders determine pendency is false. Each student already had a final prior order establishing pendency under the IDEA; nevertheless, the DOE has refused to fulfill its pendency obligations.

The relief sought is not simply a declaration that iBRAIN is the Students' placement, but a declaration that each Student is entitled to funding for that placement, and an injunction directing the DOE to fund such placements in the ordinary course. The DOE has conceded that it has not fully funded pendency for any Student. Instead, it asserts that it "has already provided over $1.7 million in such funding," as if the apparent size of the number somehow absolves it of the responsibility to pay the remaining amount owed. [Id.].

The DOE also argues that the $1.7 million payment proves it has not failed to make the required payments, even though it concedes it has not made all of them—only $1.7 million. [Id. at 32]. Section 1415(j) does not entitle parents to "substantial pendency funding" [Id. at 11]; the DOE is required to fund the entire placement. It does not get to decide how much is enough. Moreover, the DOE disproves its argument. At the end of its brief, it states: "DOE provides pendency funding for undisputed matters in accordance with its ordinary payment processes and provides funding for matters being actively litigated on the administrative level once such disputes are resolved." [Id.]. In doing so, the DOE has reaffirmed its erroneous argument that it has no legal obligation to fund pendency until its disputes have been resolved. As set forth at length in the Plaintiffs' Opening Brief and above, that argument is erroneous.

D. Plaintiffs Are Entitled to Late Fees

The DOE argues briefly that late fees have nothing to do with maintaining a student's status quo, but "are just contractual penalties that iBrain and its providers have devised to try to force DOE to pay them on their preferred timeline, contrary to Mendez." [DktEntry 31.1 at 18]. Late fees are part of the tuition and transportation amounts owed. The amounts owed are outlined in the respective contracts, which include mandatory late fees. Such late fees accrued only because the DOE failed to make payments on time. The DOE cannot carve late fees out of the contractual amount owed and declare that they are not tuition or transportation, and therefore not owed. Late fees are part of the amount owed for tuition and transportation for the Students' placement at iBRAIN and, therefore, are part of pendency, which is the DOE's responsibility.

The Second Circuit has confirmed that "implicit in maintaining the status quo is the requirement that a school district continue to finance an educational placement." Zvi D. by Shirley D., 694 F.2d at 906. The "financing" of a private placement necessarily encompasses the full contractual cost, including penalty provisions triggered by the DOE's own delay. A school district cannot discharge its pendency funding obligation at a discount by deferring payment until contractual penalties accrue and then disclaiming responsibility for those penalties. To hold otherwise would create a perverse incentive for districts to delay payment and then use the resulting penalties as evidence that the contractual terms are punitive.

Recoverable costs under IDEA are not limited to tuition; they may also include other financial burdens imposed by a school district's failure to make timely payments. See JP ex rel. Peterson v. Cnty. Sch. Bd. of Hanover Cnty., Va., 641 F. Supp. 2d 499 (E.D. Va. 2009) (holding recoverable costs may include credit card transaction fees and interest); see also M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd., 553 F.3d 315, 325 (4th Cir. 2009) (district courts have broad discretion in IDEA awards, and such awards should be equitable). The Court in Mendez v. Aviles-Ramos, 25-CV-1096 (CM), 2025 WL 2793755, at *1 (S.D.N.Y. Oct. 1, 2025), reconsideration denied, 25-CV-1096 (CM), 2025 WL 2962007 (S.D.N.Y. Oct. 20, 2025) awarded late fees as part of the contractual amount owed. The DOE attempts to distinguish that case, in a footnote, because it did not involve pendency. [DktEntry 31.1 at 19 n.3]. The DOE, however, argues that it never owes late fees because it is not a party to the contracts involved. [See DktEntry 31.1 at 19]. In fact, it is obligated to fund the Students' pendency placement. The binding contracts set the cost of that placement. DOE is also required to reimburse a Plaintiff for late fees and interest because the Plaintiff signed a contract that obligates her to pay those amounts if incurred. Mendez, 2025 WL 2793755.

While the District Court based its holding, in part, on its finding that Plaintiffs failed to show irreparable harm or a likelihood of success on the merits, the DOE does not defend these findings, but argues (erroneously) that, under Mendez, injunctive relief is not appropriate unless the Students' placements are at risk.

CONCLUSION

Appellants request that the Court reverse the District Court's denial of a preliminary injunction and remand with instructions to grant their motion, requiring the DOE to fund the Students' pendency placement and pay any late fees. Additionally, Appellants seek guidance to ensure proper enforcement of IDEA pendency rights and to clarify Mendez as it relates to prolonged funding delays.

Dated: March 31, 2026

New York, NY

Respectfully submitted,

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PETITIONERS' MEMORANDUM OF LAW IN SUPPORT OF THEIR RENEWED MOTION TO EXPEDITE BRIEFING, DATED APRIL 6, 2026

No. 25-2127

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRUCKAUF, et al.,
Plaintiffs-Appellants,

v.

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

PLAINTIFFS-APPELLANTS' RENEWED MOTION UNDER FEDERAL RULE OF APPELLATE PROCEDURE 27 FOR EXPEDITED CONSIDERATION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

I. Preliminary Statement

Plaintiffs respectfully move under Federal Rule of Appellate Procedure 27 for expedited consideration of this now fully briefed appeal, for immediate calendaring of oral argument, or, alternatively, for disposition on the existing briefs on or before Friday, April 10, 2026. This renewed motion does not revisit the Court's earlier denial of expedition on the same record. *See Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 20.1 (2d Cir. Sept. 22, 2025). The appeal is now fully briefed. *See id.* Dkt. 24.1 (Dec. 9, 2025); *id.* Dkt. 31.1 (Mar. 10, 2026).

What has changed is the record and the consequences of delay. While 25-2127 remained pending, DOE continued withholding pendency funding; Plaintiffs sought further emergency relief in October 2025 and were denied; by February 12, 2026, Plaintiffs documented $9,718,679.41 in outstanding pendency obligations in this case alone, including $7,375,319.60 in zero-payment service categories; six students' 1:1 nursing services ceased; and the District Court then denied Rule 62.1 relief and even leave to brief contempt or obtain discovery. *See* Zeal Patel Decl. ¶¶ 181–225, 571–580, No. 26-523, Dkt. 13.2, at 21–26, 53–54 (2d Cir. Mar. 12, 2026); No. 1:25-cv-05679-KPF, ECF Nos. 27, 28, 46, 52, 61, 65 (S.D.N.Y.); No. 26-523, Dkt. 46.1, at 1–2 (2d Cir. Mar. 30, 2026). This Court is now the only judicial forum capable of acting in time to prevent renewed school-access harm before school resumes on Monday, April 13, 2026.

II. Subsequent Proceedings

This motion arises from an ongoing enforcement failure during a pending appeal, not a new dispute. After denial of preliminary-injunction relief, Plaintiffs noticed 25-2127, and while that appeal remained pending DOE continued withholding tuition, transportation, and nursing funding for the students' 2025–2026 placements. *See Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 1.1 (2d Cir. Sept. 3, 2025); *id.* Dkt. 23.1 (Dec. 9, 2025); *id.* Dkt. 31.1 (Mar. 10, 2026); Patel Decl. ¶¶ 181–225, No. 26-523, Dkt. 13.2, at 21–26; No. 1:25-cv-05679-KPF, ECF No. 27, at 1–3 (S.D.N.Y. Oct. 9, 2025).

While 25-2127 was pending, Plaintiffs returned to the District Court in October 2025, advised that DOE still had not issued required pendency payments apart from a single partial nursing payment, and sought emergency TRO/PI relief; the court denied that request. *See* Patel Decl. ¶¶ 203–221, No. 26-523, Dkt. 13.2, at 25–26; No. 1:25-cv-05679-KPF, ECF Nos. 27, 28, 52. Patel further records that DOE issued approximately $4,087,175.67 in tuition, transportation, and nursing payments only after those emergency filings, reflecting the same pattern repeated throughout this case: prolonged withholding, emergency motion practice, denial of relief, and later partial payments used to argue that no real emergency existed. *Id.* ¶¶ 222–225.

DOE's theory was also tested elsewhere and rejected. In *Crespo*, DOE argued that it need not implement pendency unless it independently agreed with the parents' position or an administrative officer first issued a specific order; Judge Vargas rejected that theory as "unsupported by the statute, caselaw, and the governing regulations" and expressed concern that DOE was "not operating in good faith with respect to these students." Patel Decl. ¶¶ 226–259, esp. ¶¶ 247–258, No. 26-523, Dkt. 13.2 (summarizing *Crespo v. Aviles-Ramos*, No. 25-cv-7563 (JAV), ECF Nos. 34, 35, 38 (S.D.N.Y.)).

The October 28, 2025 conference in Davis further showed the consequences of nonpayment. Plaintiffs advised the District Court that DOE's nonpayment had placed iBRAIN under severe financial strain and had witnesses ready to testify regarding payroll and operations, but the court declined to hear that testimony and shifted to broader questions about iBRAIN's finances. Patel Decl. ¶¶ 260–280, No. 26-523, Dkt. 13.2.

DOE's own Davis filing articulated an iBRAIN-specific policy: 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 "in every iBrain case" it contests Sisters Transportation, thereby ensuring a pendency dispute before implementation begins. Patel Decl. ¶¶ 281–381, esp. ¶¶ 295, 302–304, No. 26-523, Dkt. 13.2 (*quoting Davis v. Aviles-Ramos*, No. 25-cv-7555 (KPF), ECF No. 28, at 2–5).

DOE then submitted the Kapoor declaration with its reply on the motion to dismiss, introducing new post-complaint factual assertions about students' pendency status, appeals, and payment processing to support ripeness, mootness, and standing arguments. Patel Decl. ¶¶ 414–467, No. 26-523, Dkt. 13.2; No. 1:25-cv-05679-KPF, ECF No. 39-1 (S.D.N.Y. Nov. 24, 2025). On December 24, 2025, Plaintiffs responded with a detailed submission identifying alleged inaccuracies and omissions, supported by contemporaneous materials already in DOE's possession, including records showing DOE had already received materials the declaration later implied were missing. Patel Decl. ¶¶ 468–524, esp. ¶¶ 476–482, 515–518, No. 26-523, Dkt. 13.2; No. 1:25-cv-05679-KPF, ECF No. 40, and ECF Nos. 40-1 through 40-15 (S.D.N.Y. Dec. 24, 2025).

Plaintiffs then sought correction without court intervention, requested a conference, served a Rule 11 Safe-Harbor Notice, and later sought sanctions-related relief, but the court denied the conference request and later denied sanctions pre-motion relief while stating that, "[w]ithout deciding the matter," it agreed with DOE that "[t]o the extent any conduct warrants the Court's attention, it is the conduct of Plaintiffs' counsel, not Defendants'." Patel Decl. ¶¶ 525–600, No. 26-523, Dkt. 13.2; No. 1:25-cv-05679-KPF, ECF Nos. 45, 54, at 4 (S.D.N.Y.).

By February 12, 2026, DOE's repeated invocation of the "ordinary course of business" no longer matched the record. Plaintiffs documented $9,718,679.41 in outstanding pendency obligations in this case alone, including $7,375,319.60 in service categories for which not a single payment had been issued during the school year, and reported that "[n]o nursing payments have been issued for any student since that time." No. 1:25-cv-05679-KPF, ECF No. 46, at 2–3 (S.D.N.Y. Feb. 12, 2026); Patel Decl. ¶¶ 571–580, No. 26-523, Dkt. 13.2.

Plaintiffs then narrowed the dispute to a six-student nursing emergency. On February 20, 2026, Plaintiffs filed a targeted TRO application after the nursing provider issued written notices stating that 1:1 nursing services would pause on March 5, 2026 absent payment; Patel explains that the listed balances matched the nursing agreements already in the record. Patel Decl. ¶¶ 805–838, esp. ¶¶ 823–834, No. 26-523, Dkt. 13.2; No. 1:25-cv-05679-KPF, ECF Nos. 47, 47-1, 47-2 (S.D.N.Y. Feb. 20, 2026). Plaintiffs' TRO memorandum argued that loss of nursing would prevent the students from safely commuting to or attending iBRAIN, that DOE's nonpayment therefore threatened pendency itself, and that DOE had obtained no stay permitting it to use nonpayment as a de facto suspension of pendency. Patel Decl. ¶¶ 839–893, No. 26-523, Dkt. 13.2; No. 1:25-cv-05679-KPF, ECF No. 47-3, at 1–14 (S.D.N.Y. Feb. 20, 2026).

DOE's TRO opposition advanced shifting student-specific rationales—no pendency orders for E.B. and R.L., missing information for H.C., "normal course of business" for L.S., and pending appeals plus increased-cost arguments for S.C. and S.J.D.—and Plaintiffs' reply answered those arguments student by student while again arguing that DOE had effectively granted itself a stay. Patel Decl. ¶¶ 894–961, No. 26-523, Dkt. 13.2; No. 1:25-cv-05679-KPF, ECF Nos. 49, 50 (S.D.N.Y. Mar. 2–3, 2026). After the

March 4, 2026 hearing, the District Court denied temporary injunctive relief, and Plaintiffs immediately appealed, commencing No. 26-523. Patel Decl. ¶¶ 962–968, No. 26-523, Dkt. 13.2; No. 1:25-cv-05679-KPF, ECF No. 53 (S.D.N.Y. Mar. 5, 2026).

The March 4 hearing itself put the payment-driven risk on the record. In the supplemental Spinner declaration, counsel quoted hearing testimony that B&H's chief operating officer "didn't see a payment" for eight months, "need[ed] to see some payments," and should be able to continue the business; B&H's counsel confirmed that absent payment it intended to cease services; and Judge Failla warned that "at some point, they are going to pull that trigger." Spinner Decl. ¶¶ 6–13, No. 26-523, Dkt. 46.2.

That feared harm then became actual. In the Rule 62.1 filing below, Plaintiffs reported that counsel for the nursing provider had informed them that 1:1 nursing services for the six students "would be discontinued until further notice" beginning March 30, 2026, and that without those services the students could not travel to or attend iBRAIN. No. 1:25-cv-05679-KPF, ECF No. 60, at 1–2 (S.D.N.Y. Mar. 28, 2026); ECF No. 60-1 ¶¶ 3–7. Plaintiffs then notified this Court that absent immediate intervention the six students would be unable to travel to or attend school beginning March 30, and the next day advised that 1:1 travel nursing and 1:1 school-day nursing services "have ceased," rendering the interruption "actual and ongoing." No. 26-523, Dkt. 42.1, at 1–2 (2d Cir. Mar. 29, 2026); *id.* Dkt. 46.1, at 1–2 (Mar. 30, 2026). Plaintiffs' April 2 filing further advised that the transcript excerpts came from a transcript already in the record and that the interruption "previously identified as the foreseeable consequence of prolonged nonpayment is now occurring in real time": "That trigger has now been pulled." *Id.* Dkt. 52.1, at 1–2 (Apr. 2, 2026).

The District Court nonetheless denied Rule 62.1 relief. No. 1:25-cv-05679-KPF, ECF No. 61 (S.D.N.Y. Mar. 29, 2026). As later quoted in the supplemental Spinner declaration, the court expressed concern that the provider's changed position appeared "to hew more closely to Plaintiffs' litigation strategy" and stated that it did "not believe that emergency relief is warranted because of iBRAIN's managerial shortcomings." Spinner Decl. ¶ 3, No. 26-523, Dkt. 46.2.

Plaintiffs still pursued the last remaining District Court vehicles. On March 25, 2026, they filed ECF No. 59 seeking leave to move for contempt and to obtain accelerated merits discovery, emphasizing that the school year had begun "258 days ago," that there had been "no material change" since February 12, 2026, 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." No. 1:25-cv-05679-KPF, ECF No. 59, at 1–2. DOE opposed 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 be made "in due course." *Id.* ECF No. 64, at 1–3 (S.D.N.Y. Apr. 2, 2026). On April

3, 2026, the District Court denied contempt-related relief and accelerated discovery, held that Plaintiffs had not identified a violated order, 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 are pending. *Id.* ECF No. 65, at 4–5.

Read together, these events show far more than ordinary litigation friction. DOE continued withholding pendency funding while the school year ran, opposed each enforcement vehicle Plaintiffs invoked, and then relied on later payments or later developments to argue that no true emergency existed. The District Court repeatedly declined to engage the factual record, denied emergency relief, denied Rule 62.1 relief after cessation facts were presented, and finally denied even leave to brief contempt or obtain discovery. Patel's chronology supplies the broader narrative, while the later 26-523 filings—Dkts. 42.1, 46.1, 46.2, and 52.1—show that the feared nursing interruption became actual and that, by Dkt. 65 below, the District Court had effectively been foreclosed as a forum for timely enforcement.

III. This Request Is Materially Different

The Court's September 2025 denial of expedition occurred at a materially earlier stage of the appeal and on a materially different record. *See Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 20.1 (2d Cir. Sept. 22, 2025). At that time, briefing was incomplete, and the Court had not yet been presented with the October 2025 emergency sequence below, the February 12, 2026 arrears record, the February–March 2026 six-student nursing emergency, the Rule 62.1 proceedings , or the District Court's final refusal to permit contempt briefing or accelerated discovery.

The appeal is now fully briefed. *See Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 23.1 (2d Cir. Dec. 9, 2025); *id.* Dkt. 31.1 (Mar. 10, 2026). Although merits briefing concluded only recently, the underlying request has remained the same since July 2025: judicial recognition and enforcement of each student's pendency placement, together with the funding necessary to maintain it. As Patel explains, the complaint itself supplied "the complete factual and legal basis necessary to identify and enforce each Student's pendency placement," and sought ordinary-course implementation "without undue delay," while the original PI motion expressly disclaimed any request to "fast-track" payments. Patel Decl. ¶ 2, ¶¶ 63–70, 91–97, No. 26-523, Dkt. 13.2. The legal request has not changed; only the urgency of the facts has.

Plaintiffs therefore do not ask the Court to revisit an early request to expedite briefing. They ask the narrower and more practical step of calendaring immediate oral argument or deciding the fully briefed appeal on the papers by April 10, 2026.

IV. Governing Stay-Put Framework

The IDEA's stay-put provision preserves the child's then-current educational placement during administrative and judicial proceedings, and Second Circuit law has long described that protection as automatic rather than discretionary. Congress enacted 20 U.S.C. § 1415(j) to remove from school authorities the unilateral power to alter a disabled child's program while a dispute is ongoing. *Honig v. Doe*, 484 U.S. 305, 323 (1988). Consistent with Honig, the Second Circuit held that § 1415(j) functions as an "automatic preliminary injunction" and "substitutes an absolute rule in favor of the status quo" for ordinary equitable balancing. *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982). Plaintiffs have consistently pressed that same understanding throughout these proceedings. *See* ECF No. 8 at 1, 12; ECF No. 30 at 20–22; ECF No. 47-3 at 4–8; ECF No. 59 at 1–3; ECF No. 60 at 2–4; Patel Decl. ¶¶ 2–4, 38–45, No. 26-523, Dkt. 13.2.

The private-placement cases likewise make clear that stay-put is not satisfied by nominal recognition of placement while public funding is withheld. In *Susquenita*, the Third Circuit held that once an administrative or judicial decision vindicates the parents' position, "the school district's financial responsibility should begin," because without interim financial support the parent's supposed choice to maintain the private placement "amounts to no choice at all." *Susquenita Sch. Dist. v. Raelee S.*, 96 F.3d 78, 84–87 (3d Cir. 1996).

In *Murphy*, the District Court held that once the prior administrative ruling established the private placement, the district had to fund it prospectively during the next dispute, and the Second Circuit, in an opinion by then-Judge Sotomayor, affirmed that it is "implicit" in stay-put that the district continue financing the placement because cutting off public funds "would amount to a unilateral change in placement." *Murphy v. Arlington Cent. Sch. Dist. Bd. Of Educ.*, 86 F. Supp. 2d 354, 365–67 (S.D.N.Y. 2000), aff'd, 297 F.3d 195, 199–200 (2d Cir. 2002). *Mackey* then cited *Susquenita* with approval and reaffirmed that Congress chose to keep the child 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. In an opinion authored by Judge Cabranes for a panel including Judges Leval and Sack, the Court 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) ("*See Mackey*, 386 F.3d at 160–61; *see also Susquenita*, 96 F.3d at 84–87, cited with approval in Mackey .. . ."). *Ventura de Paulino* thus reaffirms, rather than retreats from, the rule that where the operative placement is private, public financing is part of pendency.

Abrams and *Mendez* establish continuity, not conflict. In *Abrams*, then-District Judge Nathan wrote that in the pendency context "the preliminary injunction analysis is truncated," because § 1415(j) functions as an "automatic preliminary injunction." *Abrams v. Carranza*, No. 19-cv-4175, 2019 WL 2385561, at *2–4 (S.D.N.Y. June 6, 2019). Four years later, writing for a panel including Judges Sack and Nathan and Judge Brown sitting by designation, the Second Circuit in *Mendez* reaffirmed that pendency "functions as an automatic injunction" and that "funding goes hand-in-hand with placement," while rejecting only the proposition that the IDEA requires DOE to "automatically fast-track funding" in every case and expressly preserving relief where "a delay or failure to pay has jeopardized their child's educational placement." *Mendez v. Banks*, 65 F.4th 56, 63–65 (2d Cir. 2023). Plaintiffs have consistently pressed that same reading. *See* ECF No. 30 at 20–21; ECF No. 47-3 at 4–6; ECF No. 60 at 2–3; Patel Decl. ¶¶ 852–860, No. 26-523, Dkt. 13.2.

The conclusion follows directly: because stay-put is automatic and funding follows placement, DOE cannot achieve by prolonged nonpayment what it has never sought or obtained through a stay. Plaintiffs have consistently made that point. *See* ECF No. 30 at 20; ECF No. 47-3 at 6–8; ECF No. 59 at 2; ECF No. 60 at 1–3. DOE's own *Davis* position reinforces it, because DOE stated that where pendency is disputed it "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 every iBrain case" it contests Sisters transportation before implementation begins. ECF No. 40-1 at 3–5; Patel Decl. ¶¶ 281–337, No. 26-523, Dkt. 13.2.

The governing stay-put cases do not permit DOE to recognize pendency in theory while defeating it in practice through delay, paperwork demands, serial disputes, or appeals for which it has obtained no stay.

V. Plaintiffs Have Not Sought "Fast-Track" Payment

From the outset, the District Court had before it the full factual and legal basis necessary to identify and enforce each student's pendency placement. Patel explains that the complaint itself placed before the court "the complete factual and legal basis necessary to identify and enforce each Student's pendency placement," alleged that each student already possessed a final administrative order establishing iBRAIN and related services as pendency, and sought declaratory and injunctive relief requiring DOE to recognize and fund those placements during the 2025–2026 proceedings. Patel Decl. ¶¶ 2–4, No. 26-523, Dkt. 13.2, at 3–4; see also No. 1:25-cv-05679-KPF, ECF No. 1 ¶¶ 25–29, 268–280, 290.

The complaint did not seek "fast-track or immediate funding." Patel Decl. ¶ 63, No. 26-523, Dkt. 13.2, at 11. It sought implementation "in the ordinary course of business and without undue delay," and requested that funding begin no later than thirty-five days from the court's order, using the *L.V.* implementation framework as a reasonable benchmark rather than as a request for extraordinary relief. *Id.* ¶¶ 63–68; No. 1:25-cv-05679-KPF, ECF No. 1, Relief Requested & n.25. The original July 15, 2025 PI motion reaffirmed the same point: "Plaintiffs are not asking the Court to order the DOE to 'fast-track' payments, or otherwise frustrate DOE's fiscal policies," but instead asked DOE to make payments "in a reasonable time and in accordance with the respective tuition, transportation and nursing service agreements," again using the *L.V.* framework. Patel Decl. ¶¶ 90–100, esp. ¶ 92, No. 26-523, Dkt. 13.2, at 13–14; No. 1:25-cv-05679-KPF, ECF No. 8 at 19–21.

The present FRAP 27 motion therefore does not present a newly invented payment demand. It asks this Court to act on the same pendency-recognition-and-enforcement theory presented in the complaint and reaffirmed in the original PI motion. *See* No. 26-523, Dkt. 48.1, at 2–4 (2d Cir. Mar. 30, 2026). What has changed is the consequence of continued delay: months of withholding, the October 2025 emergency history, the February 12, 2026 arrears record, the later six-student nursing emergency, and the District Court's final withdrawal as a source of timely relief.

VI. The District Court Is No Longer a Viable Forum for Timely Relief

The District Court has not merely denied relief on the merits; through a sequence of rulings culminating in Dkt. 65, it has closed every meaningful procedural vehicle through which Plaintiffs attempted to obtain timely enforcement of pendency. Plaintiffs sought relief through the original PI motion, the October 2025 emergency motion, conference and Rule 11-related procedures, the February 2026 nursing TRO, Rule 62.1 relief, and finally ECF No. 59's request for leave to brief contempt and obtain accelerated discovery. *See* No. 1:25-cv-05679-KPF, ECF Nos. 8, 28, 43, 45, 48, 54, 47, 59, 60, 61, 65 (S.D.N.Y. 2025–2026). The court denied the conference request, denied sanctions pre-motion relief, denied the nursing TRO and Rule 62.1 relief, and then denied even leave to brief contempt or obtain accelerated discovery, while stating in Dkt. 65 that it "seriously doubts" its jurisdiction to proceed during the interlocutory appeals. *Id.* ECF No. 65, at 5. No meaningful lower-court path remains.

At this stage of the 2025–2026 school year, DOE's "fast-track payment" framing no longer fits the record. By February 12, 2026, Plaintiffs had documented $9,718,679.41 in outstanding pendency obligations in this case alone, including $7,375,319.60 in service categories for which not a single payment had been issued during the school year, and reported that "[n]o nursing payments have been issued for any student since that time." No. 1:25-cv-05679-KPF, ECF No. 46, at 1–3 (S.D.N.Y. Feb. 12, 2026). By late March 2026, six students' medically necessary 1:1 nursing services had reached the point of actual interruption absent payment. *See* No. 26-523, Dkt. 46.1, at 1–2 (2d Cir. Mar. 30, 2026); *id.* Dkt. 52.1, at 1–2 (Apr. 2, 2026). And in *Crespo*, Judge Vargas rejected DOE's comparable theory as "unsupported by the statute, caselaw, and the governing regulations" and expressed concern that DOE was "not operating in good faith with respect to these students." Patel Decl. ¶¶ 247–258, No. 26-523, Dkt. 13.2. With roughly two months left in a twelve-month school year, the present request is not artificial acceleration but an effort to prevent DOE from defeating pendency in practice before the year ends.

With the District Court now off the field and school set to resume on Monday, April 13, 2026, this Court is the only judicial forum capable of acting in time. No meaningful lower-court route remains, and the later emergency submissions in 26-523 showed that the harm was no longer hypothetical: six students' 1:1 nursing services faced actual cessation, and any continuation was only temporary pending emergency appellate review. See Patel Decl. ¶¶ 976–978, No. 26-523, Dkt. 13.2, at 119; No. 26-523, Dkt. 42.1, at 1–2 (2d Cir. Mar. 29, 2026); *id.* Dkt. 46.1, at 1–2.

VII. Delay Beyond April 10, 2026 Would Practically Deny Timely Injunctive Relief

By late March 2026, the dispute had ceased to be about hypothetical processing delays and had instead become a concrete school-access problem. Plaintiffs' February 2026 nursing TRO papers had already explained that without 1:1 nursing services the six affected students could not safely commute to or attend iBRAIN, so DOE's nonpayment threatened the viability of their pendency placements. *See* No. 1:25-cv-05679-KPF, ECF No. 47-3, at 1–3, 5–10 (S.D.N.Y. Feb. 20, 2026). The later appellate record confirmed that the interruption was no longer merely threatened: Plaintiffs advised this Court on March 29, 2026 that nursing services would be discontinued beginning March 30, 2026, and on March 30 advised that 1:1 travel nursing and 1:1 school-day nursing services "have ceased," rendering the interruption "actual and ongoing." No. 26-523, Dkt. 42.1, at 1–2 (2d Cir. Mar. 29, 2026); *id.* Dkt. 46.1, at 1–2 (Mar. 30, 2026).

Spring recess does not eliminate the emergency; it defines the last practical window for meaningful judicial action. Any continuation of services was, at most, temporary and tied to emergency appellate review and payment, not a permanent solution to the funding dispute. *See* Patel Decl. ¶¶ 976–978, No. 26-523, Dkt. 13.2, at 119; No. 26-523, Dkt. 42.1, at 1–2; *id.* Dkt. 46.1, at 1–2. Because classes resume on Monday, April 13, 2026, Friday, April 10, 2026 is the last practical business day on which this Court can act before the same school-access consequences again take effect.

Plaintiffs' March 30 filing presented the correct practical-denial framing. Citing *Carson*, Plaintiffs explained 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 v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981)). That is this case: six medically fragile students' access to school depends on services DOE has not funded, the District Court is no longer available as a timely forum, and once school resumes on April 13, 2026 the consequences of continued nonpayment again become immediate in operation.

Later merits relief cannot retroactively restore missed attendance, lost related services, or the educational stability that stay-put is designed to preserve. The Second Circuit has recognized that "access to immediate interim relief is essential for the vindication of this particular IDEA right," because once the status quo is disrupted, later vindication is not an adequate substitute. *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 200 (2d Cir. 2002). At this point in the school year and on this record, waiting beyond April 10, 2026 would not merely postpone relief; it would risk denying timely relief in practice.

VIII. Good Cause Exists Under FRAP 27

This motion is properly brought under Federal Rule of Appellate Procedure 27. Plaintiffs do not seek a new injunction-pending-appeal ruling under Rule 8 or reopened briefing in an immature appeal; they ask the Court to exercise its ordinary docket-management authority over an appeal that is now fully briefed. See Fed. R. App. P. 27(a), (b); *Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 23.1 (2d Cir. Dec. 9, 2025); *id.* Dkt. 31.1 (Mar. 10, 2026). The relief sought is procedural and practical: immediate calendaring for oral argument, or prompt disposition on the briefs, on or before Friday, April 10, 2026.

Good cause exists because this renewed request does not rest on the posture the Court confronted in September 2025. Since then, DOE has continued to withhold pendency funding while the appeal remained pending; the District Court denied another emergency motion in October 2025; Plaintiffs documented $9,718,679.41 in outstanding pendency obligations by February 12, 2026; six students later faced actual interruption of medically necessary 1:1 nursing services; and the District Court denied Rule 62.1 relief and even leave to brief contempt or obtain accelerated discovery while stating that it "seriously doubts" its jurisdiction to proceed during the interlocutory appeals. *See Bruckauf v. Aviles-Ramos*, No. 25-2127, Dkt. 20.1 (2d Cir. Sept. 22, 2025); No. 1:25-cv-05679-KPF, ECF Nos. 28, 46, 61, 65 (S.D.N.Y.); No. 26-523, Dkt. 46.1, at 1–2 (2d Cir. Mar. 30, 2026); *id.* Dkt. 52.1, at 1–2 (Apr. 2, 2026). Plaintiffs' underlying request, by contrast, has remained the same since July 2025. *See* No. 1:25-cv-05679-KPF, ECF No. 1 ¶¶ 268–280, 290; *id.* ECF No. 8 at 19. Good cause therefore exists because the consequences of continued delay are now concrete while no effective lower-court vehicle remains.

The requested relief is narrow and tailored. Plaintiffs do not ask this Court to design a new remedial framework or supervise payment mechanics in the first instance; they ask only that the Court either calendar immediate oral argument or decide the case on the existing briefs on or before Friday, April 10, 2026. That request is institutionally appropriate because the appeal is fully briefed and spring recess merely fixes the last practical date for meaningful judicial action before classes resume on Monday, April 13, 2026. See No. 26-523, Dkt. 46.1, at 2; *id.* Dkt. 52.1, at 1–2.

IX. Requested Relief

For these reasons, Plaintiffs respectfully request that the Court expedite consideration of this fully briefed appeal and enter an order: (1) calendaring oral argument on or before Friday, April 10, 2026; or, alternatively, (2) resolving the appeal on the existing briefs on or before Friday, April 10, 2026; or (3) granting such other expedited process sas the Court deems appropriate to ensure meaningful judicial action before school resumes on Monday, April 13, 2026.

X. Conclusion

This motion comes to the Court only after months of continued nonpayment, repeated resort to District Court enforcement vehicles, and the District Court's withdrawal as a source of timely relief. The appeal is now fully briefed. What has changed is not Plaintiffs' theory, but the practical consequence of continued delay. With school set to resume on April 13, 2026, further inaction risks allowing pendency to be defeated in practice before the school year ends. Plaintiffs therefore respectfully request that the Court act now by calendaring immediate argument or promptly resolving the appeal on the briefs.

Dated: April 6, 2026
New York, New York

Respectfully submitted,
Liberty & Freedom Legal Group Ltd.

By: /s/ *Jeffrey Arlen Spinner*
Jeffrey Arlen Spinner, Esq.
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EXHIBIT 1 – PETITIONERS' STATUS LETTER TO DISTRICT COURT JUDGE ON THE DEFENDANTS' IMPLEMENTATION OF PENDENCY, DATED FEBRUARY 12, 2026

February 12, 2026

VIA ECF

Honorable Katherine Polk Failla
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

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

Dear Judge Failla:

This status letter is intended to provide an update regarding the implementation of pendency services for the Plaintiffs in the above-captioned matter, following Plaintiffs' prior status letter dated December 24, 2025 [ECF No. 40]. This letter is submitted by Plaintiff alone in that Defendant's counsel has declined to provide Defendant's views and has refused to join in this submission.

PLAINTIFFS' POSITION

This letter is intended solely to document the current status of pendency implementation and does not seek relief or a conference. All of the amounts set forth herein have been communicated to our office by the respective payees.

I. Outstanding Pendency Amounts Since the Start of the 2025-2026 School Year

The following table reflects pendency amounts currently outstanding for each student as of the date of this letter.

An asterisk (*) denotes a service category for which no payments have been issued at any point during the 2025-2026 school year.

CHART OMITED TO COMPLY WITH FORMAT

Totals Outstanding:
Tuition: $4,768,789.91 Transportation: $2,856,588.50 Nursing: $2,093,301.00

Grand Total Outstanding: $9,718,679.41

II. Consolidated Zero-Payment Pendency Amount

Based on the asterisked entries above, the total pendency amount for services that have not received a single payment at any point during the 2025-2026 school year is: $7,375,319.60

As of the date of this letter, 224 days have elapsed since the commencement of the 2025-2026 twelve-month school year, with approximately four months remaining, yet the pendency amounts identified above have not been paid.

III. Partial Payments Issued After December 24, 2025

Since the filing of the December 24, 2025 status letter [ECF No. 40], limited payments have been issued for a small subset of students and services, including:

C.B. (IHO #296999): Tuition payment of$115,020.00 (1120126)
M.C. (IHO #295795): Tuition payment of $296,548.17 (1120126)
M.B. (IHO #296879): Tuition payment of $92,556.51 (1120126)
L.C. (IHO #296729): Transportation payment of $58,915.50 (1120126)

No nursing payments have been issued for any student since that time.

Plaintiffs have not received any correspondence nor any explanation from Defendants regarding why payments were issued for the above-referenced students and services, why no payments have been issued for the remaining students and services identified in Section I, or whether additional payments will be forthcoming.

DEFENDANTS' POSITION

We provided Defendants with ample opportunity to present their position. In fact, our February 11, 2026, email communication with Defendants' counsel and the reply were verbatim as follows:

"Dear Attorney Roe,

I am writing to follow up on my request from earlier this week for your client's input and position for the Joint Status Letter to Judge Failla, proposed for filing today, February 11, 2026.

As you are aware, the purpose of this letter is to provide Judge Failla with a current and substantive update on the implementation of pendency services for each Plaintiff-Student during the 2025-2026 school year. This is of particular importance given that the school year is now two thirds complete and there remain significant discrepancies between (1) the representations made to the Court in the Declaration of Sapna Kapoor dated November 24, 2025 [ECF No. 39-1] and throughout these proceedings, and (2) the actual status of pendency funding (tuition, transportation, nursing etc.) as reflected in both the records made available to us and the prior submissions (e.g.- Dkt. No. 40).

In order to facilitate a true joint submission, we would appreciate your client's substantive response or proposed additions/edits to the draft by the end of the day today (February 11, 2026). If your client does not intend to participate or to provide input, please let me know promptly so that we may note the same in the filing and proceed accordingly.
Thank you in advance for your prompt attention to this matter. Yours respectfully,

JEFFREY ARLEN SPINNER"

and the response we received,

"Good afternoon Jeffrey,

Defendants do not intend in joining Plaintiffs proposed letter. Kimberly L. Roe, Esq."
Plaintiffs have received no further explanation or correspondence from Defendants before submitting this letter to the Court.

Plaintiffs have served Defendants with a Rule 11(c)(2) safe-harbor notice concerning material inaccuracies and omissions in the Declaration of Sapna Kapoor [ECF No. 39-1] and await Defendants' response.

Respectfully submitted,
LIBERTY & FREEDOM LEGAL GROUP LTD.
Jeffrey Arlen Spinner, Esq.
Counsel for Plaintiffs

Cc: All Counsel of Record via ECF

EXHIBIT 2 – PETITIONERS' PRE-MOTION LETTER TO DISTRICT COURT JUDGE SEEKING LEAVE TO FILE AN EXPEDITED MOTION FOR CIVIL CONTEMPT AND TARGETED DISCOVERY, DATED MARCH 24, 2026

March 24, 2026

VIAECF

Honorable Katherine Polk Failla
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

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

Dear Judge Failla:

Plaintiffs respectfully submit this pre-motion letter seeking leave to file: (1) an expedited contempt motion concerning Defendants' failure to maintain Plaintiffs' pendency placements for the 2025-2026 extended school year; and (2) targeted, accelerated merits discovery and briefing on Plaintiffs' already pleaded claims under 42 U.S.C. § 1983 and Monell v. Department of Social Services, 436 U.S. 658 (1978). Plaintiffs respectfully submit this letter as the required pre-motion request and seek, at the Court's discretion, either a prompt pre-motion conference or leave to proceed on an expedited briefing schedule.

The procedural posture is now stark. The 2025-2026 extended school year began on July 9, 2025, when the Complaint was filed-258 days ago-and it will end in approximately 93 days. Yet DOE still has failed to maintain the pendency placements of all of the students in this case. Plaintiffs refer the Court to the Status Letter submitted on February 12, 2026, and attach it for ease of reference, since there has been no material change-there have been no additional payments for any of the 17 students in this matter. See ECF No. 46. The absence of change is itself the point.

This case has moved far beyond any dispute about prospective enforcement in the abstract. Plaintiffs are not asking the Court to revisit the preliminary-injunction framework or to apply the same "irreparable harm" analysis that has dominated earlier proceedings. Plaintiffs seek contempt because the record now demonstrates ongoing noncompliance with operative pendency obligations during a school year that is almost complete. For all 17 students, the pendency basis and DOE's corresponding maintenance obligations have been fixed through prior final administrative determinations, subsequent pendency orders, or both. See, e.g., ECF No. 1 , 167-214, 252-254; ECF No. 40 at 1-15.

Nor is the self-stay theory new. Plaintiffs put that issue before this Court at the outset. In the July 15, 2025 motion papers, Plaintiffs argued that

"Defendants have unilaterally decided to grant themselves a stay of their legal obligations." ECF No. 8 at 8. Plaintiffs then fully briefed that point more than five months ago, explaining that DOE, "by ignoring and refusing to implement its pendency obligations," had "effectively and impermissibly granted itself a stay of its Pendency obligations." ECF No. 30 at 27-28. Plaintiffs again documented on December 24, 2025 that DOE continued to withhold pendency funding while effectively granting itself a stay of its statutory obligations. ECF No. 40 at 1-3, 10-15.

That theory is legally sound. The stay-put provision is automatic and self-executing, and DOE has not obtained any stay of its pendency obligations from this Court or any appellate court. See ECF No. 47-3 at 6-8. As Plaintiffs already showed, courts addressing whether a district may suspend pendency have held that the district must satisfy ordinary stay standards before doing so. See, e.g., Draper v. Atlanta Indep. Sch. Sys., No. 1:06-CV-487-MHS, 2006 U.S. Dist. LEXIS 40964, at *35-36 (N.D. Ga. June 19, 2006); Sch. Dist. of Phi/a. v. Kirsch, No.14-CV-4910, 2017 U.S. Dist. LEXIS 3907, at* 15-21 (E.D. Pa. Jan. 11, 2017); Bd. of Educ. of the Cnty. of Boone v. K.M., No. 2:14-CV-10563, 2015 WL 12851320, at *5 (S.D.W. Va. Mar. 31,2015); John M v. Bd. of Educ. of Evanston Twp. High Sch. Dist. 202, No. 05-C-6720, 2006 U.S. Dist. LEXIS 73826, at *19-21 (N.D. Ill. Sept. 26, 2006). Thus, DOE is liable to Plaintiffs for the amount of pendency funding it should have already provided to comply with its pendency obligations "unless and until the District [is] granted a stay." Draper, 2006

U.S. Dist. LEXIS 40964, at *35-36; see also Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302,400 F.3d 508,511 (7th Cir. 2005) (comparing the automatic statutory injunction created by 20 U.S.C. § 1415(i) to an automatic stay in bankruptcy and finding that "violation of the stay-put provision [is] punishable by contempt"). DOE's nonpayment therefore cannot operate as a de facto suspension of pendency.

The same conclusion follows from the prospective-funding authorities. In Susquenita School District v. Raelee 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 held that once the prior administrative ruling established the private placement, the district was obligated to fund that placement prospectively during the pendency of the next dispute. 86 F. Supp. 2d 354, 365-67 (S.D.N.Y. 2000). The Second Circuit, in an opinion by then-Judge Sotomayor, affirmed, explaining that "implicit" in stay-put "is the requirement that a school district continue to finance an educational placement made by the agency and consented to by the parent before the parent requested a due process hearing," because cutting off public funds "would amount to a unilateral change in placement." Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 199-200 (2d Cir. 2002) (quoting Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)). Mackey then cited Susquenita with approval, reaffirming that Congress's policy choice is that the child 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). And the Second Circuit later summarized 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, regardless of the merit of the child's IEP challenge or the outcome of the relevant proceedings." Ventura de Paulino v. NYC. Dep't of Educ., 959 F.3d 519,529 n.50 (2d Cir. 2020).

This Court has also already been presented with record evidence showing that DOE's position is not an isolated mistake but an articulated implementation policy. In Davis v. Aviles-Ramos, No. 25-cv-07555 (KPF), DOE stated that although pendency is triggered by the filing of a due process complaint, 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." ECF No. 40-1 at 4. DOE further stated that "in every iBrain case" it contests Sisters transportation and that, as a result, pendency disputes exist and are adjudicated before implementation begins. Id. at 3-5. Plaintiffs responded that DOE's position "conditions the automatic protections of§ 1415(i) on the issuance of a separate administrative order" and effectively rewrites the statute. ECF No. 40-2 at 2, 6-7.

Likewise, the Court has already been shown that Judge Vargas rejected the same DOE theory in

Crespo v. Aviles-Ramos, finding DOE's arguments "baseless," concluding that DOE's position was "unsupported by the statute, case law, and the governing regulations," and expressing concern that DOE was "not operating in good faith with respect to these students." ECF No. 40 at 2 (quoting Crespo, No. 25-cv-7563 (JAY), ECF No. 38 at 11-14). The Court has also already been directed to L.V v. N.Y.C. Department of Education, No. 03-cv-9917 (LAP), including the implementation framework cited in the Complaint and the admonition that DOE's "only lawful course of action is to implement those Orders, full stop." ECF No. 1, Relief Requested n.25; ECF No. 40 at 2-3 & nn.2-3.

Against that backdrop, the present request is straightforward. Plaintiffs ask for leave to file an expedited contempt motion on the following schedule: opening papers within 48 hours of the Court's order, opposition three days thereafter, and reply one day after opposition is filed.

Plaintiffs further ask that the Court set a separate, reasonable accelerated schedule for targeted merits discovery and briefing on the already pleaded§ 1983/Monell claims, with discovery management referred as appropriate to Magistrate Judge Tarnofsky. That discovery would include DOE-focused document discovery and depositions concerning the policies, customs, training, implementation practices, and decision-making already identified in the pleadings and record. See ECF No. 1 ,i,i 255-277; ECF No. 40 at 1-15.

Plaintiffs respectfully submit that further delay serves only DOE's existing self-stay. The school year is nearly over. The record is already extensive. The self-stay theory has been before this Court since July and was fully briefed again in October. DOE's position has been repeated in this record, articulated in Davis, and rejected in Crespo. Plaintiffs therefore respectfully request leave to proceed directly to expedited contempt briefing and accelerated discovery and briefing on the already pleaded§ 1983 and Monell claims.

Respectfully submitted,

/s/ Jeffrey Arlen Spinner
Jeffrey Arlen Spinner, Esq.
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New York, New York 10016
(646) 850-5035
jeff@pabilaw.org

cc: Counsel for Defendants, via ECF

EXHIBIT 3 – LETTER TO DISTRICT COURT JUDGE FOR AN INDICATIVE RULING, DATED MARCH 28, 2026

VIA ECF

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

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

Dear Judge Failla:

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

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

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

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

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

These authorities do not conflict with Mendez. In Abrams v. Carranza, No. 19-CV-4175 (AJN), 2019 WL 2385561 (S.D.N.Y. June 6, 2019), then-District Judge Nathan reiterated that, in the pendency context, "the preliminary injunction analysis is truncated," because § 1415(j) functions as an "automatic preliminary injunction" that displaces the ordinary irreparable-harm and balancing inquiry. Four years later, writing for the Second Circuit in Mendez v. Banks, 65 F.4th 56 (2d Cir. 2023), Judge Nathan did not retreat from that principle; she held only that § 1415(j) does not require DOE to "automatically fast-track funding" in every case, while expressly preserving relief where "a delay or failure to pay has jeopardized their child's educational placement." Mendez, 65 F.4th at 64. Read together, Abrams and Mendez establish continuity, not conflict: pendency remains automatic, but where DOE's delay jeopardizes implementation of the placement, judicial relief remains available. See ECF No. 47-3, at 4–6; see also Patel Decl. ¶¶ 852–860, No. 26-523, Dkt. 13.2.

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

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

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

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

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

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

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

E.B.

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

H.C.

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

R.L.

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

S.C.

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

L.S.

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

S.J.D.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Requested Rule 62.1 Relief.

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

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

(2) At a minimum, Plaintiffs' motion raises a substantial issue in light of the post-March 5 factual development that the six Students' nursing services will be discontinued beginning Monday, March 30, 2026, causing them to be unable to travel to or attend school.

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

The Plaintiffs thank the Court for its courtesy and consideration.

Respectfully submitted,

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

EXHIBIT 4 – MEMO ENDORSEMENT FROM DISTRICT COURT JUDGE DENYING REQUEST FOR AN INDICATIVE RULING AND ALL RELIEF, DATED APRIL 3, 2026

April 2, 2026

BY ECF
Hon. Katherine Polk Failla
United States District Court
Southern District of New York
40 Foley Square, Room 2103
New York, NY 10007

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

Dear Judge Failla:

I am an Assistant Corporation Counsel in the Office of Steven Banks, Corporation Counsel of the City of New York, the attorney assigned to represent Defendants in the above- referenced matter. In accordance with your Honor's individual practice rule 2(C), Defendants respectfully submit this letter in opposition to Plaintiffs' March 25, 2026 letter motion seeking 1)an expedited contempt motion, and 2) accelerated merits discovery and briefing regarding Plaintiffs alleged 42 U.S.C. § 1983 and Monell claims.[1] ECF No. 59. Plaintiffs' requests should be denied because they have failed to establish any basis for contempt, as they do not identify a violation of a clear and unambiguous court order. They likewise fail to adequately plead their claims under 42 U.S.C. § 1983 or Monell. Accordingly, discovery, let alone expedited discovery, is unwarranted. Therefore, for the reasons set forth below, Plaintiffs' application should be denied in its entirety.

Background

As the Court is aware, Plaintiffs have repeatedly, and unsuccessfully, sought expedited relief in this matter. Less than a week after filing the Complaint, Plaintiffs moved for a preliminary injunction, which the Court denied for failure to demonstrate irreparable harm. ECF No. 8; see also Dkt Text Order dated August 14, 2025. Plaintiffs made their second request on October 10, 2025, seeking a preliminary injunction and temporary restraining order; that motion was also denied. ECF Nos. 28-31; see also Dkt Text Order dated October 10, 2025. On February 20, 2026,

Plaintiffs filed their third motion for a Preliminary Injunction, which after full briefing and a conference, was denied in its entirety. ECF No. 47; see also Dkt Txt Order dated March 5, 2025. Most recently, just three days after filing the instant letter motion, Plaintiffs sought emergency relief and an indicative

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[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

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

[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).

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 Cnty. High Sch. Dist. No. 302, 400 F.3d 508 (7th Cir. 2005) is unavailing. In Casey K. the district issued a new IEP that did not authorize the student's continued placement at the school district's expense, prompting the parents to invoke the stay-put provision to maintain that placement during the dispute. Th[12]at is not the case here, where each student-plaintiff continues to attend iBrain at the DOE's expense. As evidenced by Plaintiffs' previously denied motions for emergency relief, Plaintiffs have failed to present any evidence that the students' placements are at risk.

Moreover, Defendants are not in violation of any court order. Defendants have complied with their pendency obligations and remitted pendency payments as appropriate for students with an unappealed pendency order and an active administrative proceeding through March 31, 2026. Since the filing of the instant matter, some of the underlying administrative cases have concluded, thus ending Plaintiffs' entitlement to pendency, while other pendency determinations are currently on appeal before the SRO. Further pendency payments where applicable will be made in due course. Plaintiffs' allegations that those payments are somehow insufficient or untimely are in direct contravention of Mendez v. Banks, 65 F.4th 56 (2d Cir. 2023) (Finding that DOE's ordinary payment procedures are in line with the realities of bureaucratic administration. "The DOE receives thousands of funding requests under the IDEA at the start of each school year and spends hundreds of millions of dollars annually to fund placements [...] If each pendency order entitled parents or guardians to immediate payment, school districts would be unable to implement basic budgetary oversight measures, such as requiring receipts before reimbursement." Ventura de Paulino, 959 F.3d at 535 (citation omitted).") Finally, where pendency orders are under appeal with the State Review Office, those orders definitionally cannot be "clear and unambiguous" such that failure to implement them rises to the high standard needed to prove contempt.

In short, Plaintiffs cannot prove contempt because Defendants have not violated any court order. Accordingly, there is no basis for such a finding and Plaintiffs' request for a conference and expedited briefing schedule should be denied.

<u>Plaintiffs Fail to Plead a 1983/Monell Claim</u>

To state a claim under Section 1983 against a municipal defendant, a plaintiff must allege "(1) an official policy or custom that (2) causes the plaintiff to be subjected to (3) a denial of a constitutional right." Torraco v. Port Auth. of N.Y. & N.J., 615 F.3d 129, 140 (2d Cir. 2010) (internal quotation marks omitted) (quoting Wray v. City of New York, 490 F.3d 189, 195 (2d Cir. 2007)); see also Agosto v. N.Y.C. Dep't of Educ., 982 F3d 86, 97 (2d Cir. 2020). Plaintiffs seeking to hold liable a local government under §1983 must prove that "action pursuant to official municipal policy" caused their injury." Monell v. New York City Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). To support the existence of a municipal policy or custom, a plaintiff must provide evidence of "(i) a formal policy officially endorsed by the municipality; (ii) actions taken by government officials responsible for establishing the municipal policies that caused the particular deprivation in question; (iii) a practice so consistent and widespread that, although not expressly authorized, constitutes a custom [...]of which a supervising policy-maker must have been aware; or (iv) a failure by policymakers to provide adequate training or supervision to subordinates to such an extent that it amounts to deliberate indifference to the rights of those who come into contact with the municipal employees." Scott v. Westchester County, 434 F. Supp. 3d 188, 201 (S.D.N.Y. 2020).

Having failed to sufficiently plead the above requirements Plaintiffs still seek an "accelerated schedule for targeted merits discovery and briefing on the already pleaded § 1983/Monell claims." This Court should deny that request or, alternatively, dismiss the claims for failure to state a claim. The complaint is void of any alleged constitutional violations that were caused by an official DOE policy. Rather than identify a "widespread" policy or practice, Plaintiffs offer only a single conclusory assertion that "Defendants violated Plaintiffs' rights under 42 U.S.C. § 1983 by failing to have adequate policies, procedures, protocols, and training to ensure that the long-standing provisions of the IDEA and New York State special education laws are being implemented." ECF No. 1 at para 276. Given Plaintiffs insufficiently plead 1983 claims, accelerated discovery on this issue would be futile and should be denied.

Conclusion

For the foregoing reasons, Plaintiffs' motion for a conference should be denied in its entirety. Thank you for Your Honor's consideration.

Sincerely,
/s/ KLR
Kimberly L. Roc
Assistant Corporation Counsel

cc. By ECF
Plaintiffs' Counsel

The Court has reviewed Plaintiffs' letter motion seeking (i) leave to file a contempt motion and (ii) accelerated merits discovery on Plaintiffs' claims under Section 1983 and Monell (Dkt. #59), as well as Defendants' above response (Dkt. #64). Both of Plaintiffs' requests are DENIED.

On the contempt issue, Defendants are correct that Plaintiffs have not identified a single Order of this Court with which Defendants have failed to comply. See United States v. Charmer Indus., 722 F.2d 1073, 1079 (2d Cir. 1983) ("It is well settled that a court may not hold a person in contempt unless he has violated a definite and specific order of the court."); Fendi Adele S.R.L. v. Burlington Coat Factory Warehouse Corp., No. 06 Civ. 85 (LBS), 2007 WL 2982295 (S.D.N.Y. Oct. 10, 2007) ("A party will be held in civil contempt of a court order only upon a showing of 'clear and convincing' evidence of a violation of 'a clear and unambiguous' order of the court." (quoting New York v. Loc. 28, Sheet Metal Workers' Int'l Ass'n, 170 F.3d 279, 282-83 (2d Cir. 1999))).

To the extent that Plaintiffs seek to argue that Defendants' contemptible conduct is a violation of the IDEA's stay-put provision (see Dkt. #59 at 2 (citing Casey K. v. St. Anne Cnty. High Sch. Dist. No. 302, 400 F.3d 508, 511 (7th Cir. 2005) for the proposition that the stay-put provision is punishable by contempt)), they have provided no evidence that students' placements are at risk. Defendants have not raised a remotely colorable claim for contempt, so leave to file a motion seeking such a remedy is DENIED.

On the second issue, discovery is inappropriate because Defendants wish to move to dismiss Plaintiffs' Section 1983 and Monell claims. (See Dkt. #25-26, 39). In a similar case before this Court, Davis et al. v. Aviles-Ramos et al., 25 Civ. 7555, the Court stayed consideration of Defendants' motion to dismiss until after the various interlocutory appeals have been resolved. (25 Civ. 7555, Dkt. #57 (citing Dkt. #45)). For that reason, the Court denied Plaintiffs' near identical request for leave to file a contempt motion and to conduct discovery. (Id.).

In this case, although the Court has not stayed the pending motion to dismiss, there are nonetheless two pending interlocutory appeals. (See Dkt. #31, 53). The Court seriously doubts its jurisdiction to resolve the motion to dismiss while those appeals are pending. In any event, it does not believe discovery is appropriate while two interlocutory appeals and a motion to dismiss are pending. Consequently, Plaintiffs' motion for accelerated merits discovery is DENIED.

The Clerk of Court is directed to terminate the pending motion at docket entry 59.

SO ORDERED

Dated: April 3, 2026
New York, New York

Hon. Katherine Polk Failla
United States District Judge

EXHIBIT 5 – DECLARATION OF JEFFREY ARLEN SPINNER, DATED APRIL MARCH 30, 2026

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
---X
OLIVER BRUCKAUF, et al.,
Plaintiffs-Appellants,
-against- No. 26-523
MELISSA AVILES-RAMOS, et al.,
Defendants-Appellees.
---X
DECLARATION OF JEFFREY ARLEN SPINNER

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

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

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

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

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

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

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

5. Although the transcript cover reflects March 3, 2026, the hearing itself was actually held on March

4, 2026. The Second Circuit record reflects that, on March 3, 2026, the district court set a show cause hearing for March 4, 2026, and the district court minute entry states: "Show Cause Hearing held on 3/4/2026." See Case No. 26-523, Dkt. 13.2 at 153-154.

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

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

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

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

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

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

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

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

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

Executed: March 30, 2026
New York, New York

/s/ Jeffrey Arlen Spinner
Jeffrey Arlen Spinner, Esq.
Liberty & Freedom Legal Group
105 East 34th Street, Suite 190
New York, New York 10016
(646) 850-5035
Jeff@pabilaw.org

EXHIBIT 6 – LETTER REGARDING DEVELOPMENTS TO NURSING, DATED APRIL 2, 2026

April 2, 2026

VIA CM/ECF

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

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

Dear Clerk Wolfe:

Plaintiffs-Appellants respectfully submit this response to Appellees' letter (Dkt. 49.l) to advise the Court of a concrete development bearing directly on the pending emergency motion: the nursing interruption previously identified as the foreseeable consequence of prolonged nonpayment is now occurring in real time.

First, Appellees' suggestion that the current cessation of nursing services reflects a sudden change in position or merely litigation-driven maneuvering is contradicted by the record already before this Court. Appellees themselves placed that transcript before this Court as Exhibit A to Dkt. 29. l. In the declaration accompanying that submission, however, Appellees described Exhibit A as "a true and correct copy of the transcript of the March 3, 2026, hearing in this case." The record reflects otherwise: on March 3, 2026, the district court set a show cause hearing for March 4, 2026, and the district court minute entry states, "Show Cause Hearing held on 3/4/2026." Spinner's declaration, therefore, did not place any new transcript or new factual material before this Court, it simply corrected the hearing date and identified limited excerpts from a transcript already submitted by Appellees.

Those excerpts confirm that the payment-driven risk was not a new theory. The March 4, 2026, show cause hearing transcript shows that B&H's COO testified that he had "never had this amount delayed," that he had not seen payment "for the last eight months since July," and that he "need[ed] to see some payments" in order to continue providing services. B&H's counsel then confirmed on the record that, "in the case where there's no payment," it was the provider's intention "to cease providing the services." Judge Failla herself recognized the same payment driven risk, stating: "He shouldn't be working for free," and warning DOE not to "take solace" because "at some point, they are going to pull that trigger." That trigger has now been pulled.

Second, this case is not, and has never been, a request for abstract "fast-tracked" payment. Plaintiffs-Appellants have consistently sought enforcement of pendency rights and implementation of services that DOE was already obligated to maintain. With fewer than three months remaining in the twelve-month school year, DOE cannot credibly characterize its refusal to fund nursing services since July 2025 as a mere dispute over administrative timing. *Mendez* did not authorize a school district to suspend pendency through prolonged nonpayment and then invoke its own internal process as a defense. On the contrary, *Mendez* expressly preserved relief where a delay or failure to pay has jeopardized the child's educational placement. *Mendez v. Banks*, 65 F.4th 56, 65 (2d Cir. 2023). That is now exactly the posture before this Court. What Appellees previously characterized as a dispute over administrative payment timing has become an implementation failure that prevents these students from accessing the pendency placement to which they are entitled.

Third, Appellees' position remains incompatible with settled stay-put principles. The right protected by 20 U.S.C. § 1415(j) is the right to maintenance of the child's then-current educational placement at public expense during the pendency of the dispute. As the Second Circuit explained in *Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 297 F.3d 195, 199-200 (2d Cir. 2002), quoting *Zvi D. by Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982): "Implicit in the maintenance of the status quo is the requirement that a school district continue to finance an educational placement made by the agency and consented to by the parent before the parent requested a due process hearing. To cut off public funds would amount to a unilateral change in placement." The present cessation of 1:1 travel nursing and 1:1 school-day nursing means that these six medically fragile students cannot safely travel to iBRAIN or remain there during the school day. That is not a collateral billing issue, it is the functional denial of the placement itself.

Plaintiffs-Appellants recognize the Court is actively considering the pending emergency motion. At the same time, because the Students remain without the nursing services required to access their placement, absent interim relief, the ongoing practical effect is the continued deprivation of their federally protected stay-put rights. See *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981). Each additional school day without nursing services is another day these six medically fragile students cannot access their pendency placement at iBRAIN. That harm is concrete, cumulative, and not fully compensable through retrospective relief alone.

Plaintiffs-Appellants respectfully note, for transparency and record preservation, that should the service interruption continue, the established framework for enforcing these students' federal rights - including application to the Circuit Justice for emergency relief - may require consideration. The adequacy of any eventual remedy and the availability of every avenue to protect these students' federally guaranteed stay-put rights must remain open. Plaintiffs-Appellants raise this as a candid disclosure of the posture their clients face, not as a challenge to this Court's authority or a suggestion that the Court has acted inappropriately.

For present purposes, however, Plaintiffs-Appellants respectfully ask only that the Court consider the present, concrete posture of the case as it evaluates the pending emergency motion and grant such relief as the Court deems just and appropriate.

Respectfully submitted,

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

Cc: All counsel of record via CM/ECF

RESPONDENTS' OPPOSITION TO APPELLANTS' RENEWED MOTION TO EXPEDITE BRIEFING, DATED APRIL 7, 2026

April 7, 2026

Clerk of the Court
U.S. Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007

Re: Bruckauf v. Aviles-Ramos, Docket No. 25-2127

To the Hon. Clerk of the Court:

On behalf of appellees the New York City Department of Education (DOE) and its Chancellor, we respectfully write to oppose plaintiffs' second motion to expedite the appeal, which includes a stunning request for this Court to resolve the appeal this week, with or without oral argument (ECF No. 45). This Court has already denied plaintiffs' first motion to expedite (ECF No. 20). It should do the same this time around, too.

Plaintiffs seek expedition purportedly to obtain speedy resolution of their claim for pendency nursing funding for six students. But that claim is pending in a separate appeal that plaintiffs filed, No. 26-523. The motion briefing for plaintiffs' nursing claim postdates the record of this appeal. Plaintiffs provide no basis for expedition of this appeal.

What's more, plaintiffs' actions in the other appeal belie their claimed need for expedition. Although plaintiffs noticed that other appeal over a month ago—on March , 2026 (see No. 26-523, ECF No. 1), and have filed three separate motions, along with multiple letters to the Court, in connection with that appeal—they have yet to file their appellants' brief and appendix. Indeed, plaintiffs requested a due date of May 19 for their appellants' brief in that appeal (No. 26-523, ECF No. 41)—hardly demonstrating any need for expedition.

The motion should be denied.

Respectfully submitted,

STEVEN BANKS
Corporation Counsel
of the City of New York
Attorney for Appellees

By: _____/s_______________
Amy McCamphill
Assistant Corporation Counsel

CIRCUIT COURT'S ORDER DENYING PETITIONERS' RENEWED MOTION TO EXPEDITE BRIEFING, DATED APRIL 8, 2026

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the8th day of April, two thousand twenty-six.

Before: William J. Nardini,
Circuit Judge.

Oliver Bruckauf, as Parent
and Natural Guardian of
E.B. and Individually, et al.
Plaintiffs - Appellants,

ORDER
Docket No.
25-2127

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.

Appellants move to expedite oral argument.

IT IS HEREBY ORDERED that the motion is DENIED.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court