

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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 14th day of May, two thousand twenty-six.

Present:

DEBRA ANN LIVINGSTON,
Chief Judge,
DENNIS JACOBS,
BARRINGTON D. PARKER,
Circuit Judges.

CYNTHIA RAMOS, INDIVIDUALLY AND AS PARENT
AND NATURAL GUARDIAN OF W.R., 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., JENNIE LANDSMAN,
INDIVIDUALLY AND AS PARENT AND NATURAL
GUARDIAN OF J.L.,

Plaintiffs-Appellants,

v.

25-1321

KAMAR H. SAMUELS, AS CHANCELLOR OF THE NEW
YORK CITY DEPARTMENT OF EDUCATION, NEW
YORK CITY DEPARTMENT OF EDUCATION,

1
2 *Defendants-Appellees,*
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5 OLIVER BRUCKAUF, AS PARENT AND NATURAL
6 GUARDIAN OF E.B. AND INDIVIDUALLY, JANERIS
7 RODRIGUEZ MEJIA, AS PARENT AND NATURAL
8 GUARDIAN OF E.R. AND INDIVIDUALLY, MAYTINEE
9 BIRD, AS PARENT AND NATURAL GUARDIAN OF H.C.
10 AND INDIVIDUALLY, DONNA CORNETT, AS PARENT
11 AND NATURAL GUARDIAN OF J.B. AND
12 INDIVIDUALLY, LEONARDA BAUTISTA, AS PARENT
13 AND NATURAL GUARDIAN OF J.B. AND
14 INDIVIDUALLY, KAMOLPORN LUMMAYOS, AS PARENT
15 AND NATURAL GUARDIAN OF R.L. AND
16 INDIVIDUALLY, CLAUDIA RIVAS, AS PARENT AND
17 NATURAL GUARDIAN OF S.C. AND INDIVIDUALLY,
18 SANDRA LEE, AS PARENT AND NATURAL GUARDIAN
19 OF V.G. AND INDIVIDUALLY, CRYSL CROSLY, AS
20 PARENT AND NATURAL GUARDIAN OF Z.C. AND
21 INDIVIDUALLY,
22

23 *Plaintiffs-Appellants,*
24

25 v.

25-1355

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27 KAMAR H. SAMUELS, AS CHANCELLOR OF THE NEW
28 YORK CITY DEPARTMENT OF EDUCATION, NEW
29 YORK CITY DEPARTMENT OF EDUCATION,
30

31 *Defendants-Appellees.*¹
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36 For Plaintiff-Appellant:

RORY J. BELLANTONI (Nicole Lancia, Jeffrey A.
Spinner, David Markese, *on the brief*), Liberty and
Freedom Legal Group, Ltd., New York, NY.

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40 For Defendants-Appellees:

DIANA LAWLESS (Richard Dearing, Deborah A.
Brenner, *on the brief*), Of Counsel, for Muriel

¹ The Clerk of Court is respectfully directed to amend the official case captions as set forth above. Plaintiffs originally filed their complaints against Melissa Aviles-Ramos in her official capacity as Chancellor of the New York City Department of Education. Kamar H. Samuels is the current chancellor and is automatically substituted as a party under Federal Rule of Appellate Procedure 43(c)(2).

1 Goode-Trufant, Corporation Counsel of the City of
2 New York, New York, NY.
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4 Appeal from a judgment of the United States District Court for the Southern District of
5 New York (Schofield, *J.*).

6 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND**
7 **DECREED** that the judgment of the district court is **AFFIRMED**.²

8 Plaintiffs-Appellants appeal from a May 21, 2025 judgment of the United States District
9 Court for the Southern District of New York denying their requests for injunctive relief and
10 granting the motions to dismiss by the New York City Department of Education (“DOE”) in this
11 action pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et*
12 *seq.*³

13 Plaintiffs-Appellants, the parents of children with disabilities who were enrolled at the
14 International Institute for the Brain (“iBrain”) for the 2024-2025 school year, first filed an
15 administrative complaint on behalf of their children on July 2, 2024, alleging that the DOE had
16 denied each student a free and appropriate public education (“FAPE”) for the 2024-2025 school
17 year and seeking funding for tuition and related services at iBrain for that year. Within a week
18 they filed these actions in federal court, seeking injunctive and declaratory relief concerning their
19 child’s placement for that school year, which ended in June 2025.

20 Plaintiffs-Appellants each sought (1) a declaratory judgment that the students’ pendency
21 placements were at iBrain throughout the administrative and judicial proceedings and that they
22 were entitled to full funding of tuition at iBrain; (2) an injunction implementing pendency funding

² Appellants’ motions for leave to file status update letters are denied.

³ These tandem appeals were dispensed with in a single decision and order of the United States District Court for the Southern District of New York. The arguments presented in each appeal are substantially the same. All references to the Appendix and Briefs refer to No. 25-1355, *Bruckauf v. Aviles Ramos*.

1 in the ordinary course of business without undue delay; and (3) an injunction requiring DOE to
2 immediately implement and adhere to all final, unappealed administrative orders for funding. The
3 district court dismissed most of the claims as either (1) moot because the DOE had already paid
4 for the child’s tuition or (2) unripe because the DOE did yet not have a settled obligation to pay.
5 For the remaining justiciable claims, the district court denied injunctive relief because the
6 Plaintiffs-Appellants failed to state a claim under the IDEA.

7 On appeal, Plaintiffs-Appellants argue: (1) that the district court erred in determining that
8 claims were moot; (2) that the district court erred in determining that other claims were unripe; (3)
9 that the district court erred in rejecting justiciable claims for failure to state claim under the IDEA;
10 and (4) that the district court erred in denying relief for one plaintiff, Z.C., as unripe because no
11 pendency order had issued. For the reasons set forth herein, we disagree. We assume the parties’
12 familiarity with the underlying facts, the procedural history of the case, and the issues on appeal,
13 which we set forth in this summary order only as necessary to explain our decision to **DISMISS**
14 in part as moot and otherwise **AFFIRM**.

15 * * *

16 The IDEA requires that states receiving federal special education funding provide children
17 with disabilities with a FAPE. 20 U.S.C. § 1400(d)(1)(A). To ensure that qualifying children
18 receive a FAPE, school districts must create an individualized education program (“IEP”) for
19 qualifying children. States must then provide an administrative procedure for parents to challenge
20 the adequacy of their children’s IEPs. *See Mendez v. Banks*, 65 F.4th 56, 59 (2d Cir. 2023).
21 Challenges to a school district’s IEP are normally handled through these administrative
22 procedures. *Id.* In New York this process has two steps. *Id.* First, parents can file a complaint
23 and be heard by an impartial hearing officer (“IHO”). *Id.* Second, either side can appeal the IHO’s

1 order resolving the complaint to a state review officer (“SRO”). *Id.* Following the completion of
2 the state administrative process, either party may seek review of the SRO’s decision in federal or
3 state court. *Id.*

4 During the pendency of these administrative proceedings, the child is entitled to remain in
5 their then-current educational placement at public expense under the IDEA’s “stay-put” or
6 “pendency” provision. 20 U.S.C. §1415(j). This provision reflects “Congress’ policy choice that
7 all [disabled] children, regardless of whether their case is meritorious or not, are to remain in their
8 current educational placement until the dispute with regard to their placement is ultimately
9 resolved.” *Mackey ex rel. Thomas M. v. Bd. of Educ. For Arlington Cent. Sch. Dist.*, 386 F.3d
10 158, 160–61 (2d Cir. 2004) (emphasis removed and internal quotations omitted).

11 We have characterized the stay-put provision as “in effect, an automatic preliminary
12 injunction.” *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982). When parents
13 can show that the school district’s failure to pay for an educational placement jeopardizes that
14 placement for the school year in question, they can bring unexhausted claims in federal court and
15 seek injunctive relief. *Ventura de Paulino v. New York City Dep’t of Educ.*, 959 F.3d 519, 531 (2d
16 Cir. 2020). This provision “substitutes an absolute rule in favor of the status quo—that is, the
17 maintenance of a student’s then-current educational placement—for the standard preliminary
18 injunction analysis involving irreparable harm, the likelihood of success on the merits, and the
19 balance of hardships.” *Mendez*, 65 F.4th at 62 (internal quotations omitted).

20 In *Mendez*, we were confronted with an appeal substantially similar to that at issue here.
21 After receiving pendency orders, the *Mendez* plaintiffs “sprinted to federal court” and moved for
22 a preliminary injunction and an order requiring immediate payment from the DOE under the

1 pendency provision, the very same statutory provision invoked here.⁴ *Id.* at 60. Plaintiffs argued
2 that the IDEA’s stay-put provision entitled them to immediate funding. *Id.* at 63. The district
3 court rejected this argument and plaintiffs appealed. We agreed with the district court. The
4 “IDEA’s stay-put provision does not create an entitlement to immediate payment or
5 reimbursement. Parents or guardians may . . . be able to obtain such relief if they establish that a
6 delay or failure to pay has jeopardized their child’s educational placement. But absent such a
7 showing, the DOE is not obliged to circumvent its ordinary payment procedures.” *Id.*

8 Plaintiffs-Appellants here raise substantially the same argument as in *Mendez*, which the
9 district court properly rejected. As pendency orders were issued, and payments were made by the
10 DOE, the district court rightly concluded that some of the Plaintiffs-Appellants’ claims were moot.
11 As to others, the district court correctly concluded that the claims were unripe, because Plaintiffs-
12 Appellants had made no showing that a delay in payment jeopardized their child’s placement and
13 ongoing pendency proceedings might yet determine what obligations the DOE owed to Plaintiffs-
14 Appellants.⁵ To repeat our holding in *Mendez*, “the IDEA’s stay-put provision does not create an
15 entitlement to immediate payment or reimbursement,” and “DOE must first withhold payments
16 that have actually accrued before [p]laintiffs can seek those payments in court.” *Id.* at 61, 63. And
17 Plaintiffs-Appellants before the district court did not even contend that “a delay or failure to pay
18 [had] jeopardized their child’s educational placement,” *id.* at 63, apart from the generalized claim

⁴ To be sure, Plaintiffs-Appellants in this case did not even wait for pendency orders before filing their claims in federal court, although all children now have such orders.

⁵ On appeal, Plaintiffs-Appellants also argue that the district court erred in concluding that Z.C.’s claims were, in part, unripe. We disagree. At the time of the district court’s decision, Z.C. had not received a pendency order. Without a pendency order, and absent any showing of threatened placement, the DOE had no obligation immediately to fund Z.C.’s attendance at iBrain. And any future obligation to reimburse Z.C. for iBrain attendance was uncertain with nothing in the record to suggest that DOE would refuse payment should it become due. *See Mendez*, 65 F.4th at 61 (“Plaintiffs also argue that prophylactic relief is warranted because the DOE has a track record of making untimely payments and is predestined to do the same here. But even assuming such a track record could render these claims ripe, nothing in the record before us indicates that the DOE will shirk its obligations when they come due.”).

1 (not repeated on appeal) that delayed payments during pursuit of pendency might cause iBrain
2 itself to close.⁶ *See, e.g.*, Plaintiffs’ Memorandum of Law in Support of Order to Show Cause at
3 14, *Ramos v. Aviles-Ramos*, No. 24-CV-05109 (S.D.N.Y. Oct. 18, 2024), ECF No. 64; Declaration
4 of Arthur Mielnik, *Ramos v. Aviles-Ramos*, No. 24-CV-05109 (S.D.N.Y. Aug. 16, 2024), ECF No.
5 41.

6 Moreover, the school year at issue is now over for all Plaintiffs-Appellants, mooted their
7 claim to an injunction under the stay-put provision to maintain placement for 2024-2025. In an
8 apparent effort to avoid this conclusion, Plaintiffs-Appellants belatedly argue that they are entitled
9 to contractual late fees and to some pendency amounts allegedly still due for the 2024-2025 school
10 year. But the claim to late fees was not properly raised before the district court and this Court does
11 not consider issues that are unpreserved. *Green v. Dep’t of Educ.*, 16 F.4th 1070, 1078 (2d Cir.
12 2021). Moreover, to the extent that Plaintiffs-Appellants seek late fees and disputed pendency
13 amounts, the district court properly dismissed such claims. DOE must “first withhold payments
14 that have actually accrued before Plaintiffs can seek those payments in court.” *Mendez*, 65 F.4th
15 at 61. And absent a showing that “a delay or failure to pay has jeopardized [a] child’s educational
16 placement . . . the DOE is not obliged to circumvent its ordinary payment procedures.” *Id.* at 63.

17 Plaintiffs-Appellants brought this lawsuit under the pendency provision, seeking
18 prospective injunctive relief for the 2024-2025 school year. While nominally including other
19 forms of relief, Plaintiffs-Appellants essentially sought to fast-track payment from the DOE. But
20 under the IDEA’s stay-put provision, plaintiffs are only entitled to payment where “a delay or

⁶ As to the assertion on appeal that the district court erred in applying the irreparable harm standard, the district court addressed irreparable harm only because Plaintiffs-Appellants themselves, in a companion claim they have since abandoned, argued that they were entitled to a traditional preliminary injunction. Motion for Preliminary Injunction, *Bruckauf v. Aviles-Ramos*, No. 24-CV-05136 (S.D.N.Y. Oct. 23, 2024) ECF No. 52, at 19.

1 failure to pay . . . threaten[s] their child’s placement.” *Id.* at 59. Because the 2024-2025 school
2 year has ended, Plaintiffs-Appellants cannot now claim that any child’s placement at iBrain for
3 that school year is at risk.⁷ We cannot issue an injunction to prevent a supposed future harm that
4 has already failed to occur, and Plaintiffs-Appellants’ claim is moot. *Cf. Knaust v. City of*
5 *Kingston*, 157 F.3d 86, 88 (2d Cir. 1998) (“Because this appeal thus seeks to enjoin the future
6 occurrence of events that are already in the past, we lack appellate jurisdiction.”). To the extent
7 Plaintiffs-Appellants press their entitlement to additional payments for the 2024-2025 school year,
8 such claims were properly dismissed by the district court. For all the reasons previously discussed,
9 those claims are either unpreserved or unripe for resolution.

10 * * *

11 We have considered Plaintiffs-Appellants’ remaining arguments and find them to be
12 without merit. Accordingly, the judgment of the district court is **DISMISSED** in principal part as
13 moot and otherwise **AFFIRMED**.

14 FOR THE COURT:
15 Catherine O’Hagan Wolfe, Clerk
16

⁷ Moreover, Plaintiff-Appellants do not contend that any child lost their placement at iBrain for the 2024-2025 school year as a result of the DOE’s failure to honor the stay-put provision.