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Brian (aka Mariah) L. v. The Administration for Children's Services

N.Y. Co. Family Court, DKT. #K-1154/96

The National Center for Youth Law signed on as amicus in this case addressing foster care agencies' constitutional and statutory obligations to provide all medically necessary care to foster youth. Brian a/k/a Mariah L. is a foster child who has been in foster care since the age of ten. She suffers from gender identity disorder (GID), meaning that her body is physically male, but she is psychologically female and has identified as a girl since early childhood. Four medical experts have agreed that sex reassignment surgery is medically necessary for Mariah. However, the New York Administration for Children's Services (ACS) has taken the position that its *parens patriae* relationship to Mariah stops short of taking financial responsibility for this surgery. Additionally, ACS claims that its legal duty to provide medical care to foster children is limited to the range of services covered by New York's Medicaid program.

On February 21, 2007, the New York County Family Court entered an order directing ACS to arrange and pay for the sex reassignment surgery. ACS appealed the order, and the amicus brief was submitted on May 10, 2007, in support of an affirmance of the Family Court's order.

Martha Matthews of the Children's Law Center for Los Angeles and Corene Kendrick of the Youth Law Center wrote the amicus brief on behalf of amici curiae. The National Center for Youth Law joined the brief along with the seventeen other amici organizations, including the Children's Law Center of Minnesota, the Juvenile Law Center, Lawyers for Children, Legal Services for Children, the National Association of Counsel for Children, the National Health Law Program, and many others. In the brief, amici argue (1) that it is unlawful for a child welfare agency to deny medically necessary treatment on the basis of an administrator's non-expert opinion, or on the basis of past behavior that is typical of youth in foster care; (2) that Mariah L. and all other foster children have a constitutional right to be provided with all necessary medical care; and (3) that New York and numerous other states have statutes and regulations requiring the child welfare agency to provide medical care for foster children. Oral argument in the case was heard on June 6, 2007 and there is not yet a decision in the case.

Updated April 21, 2010

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