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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 54
In the Matter of Arisleda Duarte,
Respondent,
v.
City of New York,
Appellant.

Fay Ng, for appellant.
Valentina M. Morales, for respondent.
Columbia Law School Prisoners and Families Clinic of
Morningside Heights Legal Services; Prisoners' Rights Project of
the New York City Legal Aid Society, amici curiae.

MEMORANDUM:

The appeal should be dismissed, without costs, as moot.

Respondent City of New York has asked us to review
whether it was error for the Appellate Division to conclude that
it was arbitrary and capricious for the New York City Department
of Correction to deny petitioner's application to enter the

nursery program at the Rose M. Singer Center at Rikers Island.

We agree with petitioner that this proceeding is moot because her child is now of an age that renders him ineligible for participation in the nursery program pursuant to Correction Law § 611. Moreover, in light of the Department of Correction's revised Nursery Order, effective February 11, 2013, we decline to invoke the mootness exception (see Matter of Hearst Corp. v Clyne, 50 NY2d 707, 714-715 [1980]).

* * * * *

Appeal dismissed, without costs, as moot, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur.

Decided March 21, 2013