Puerto Rico’s Child Welfare System — Ready to Transform

By Flor Bermudez, Staff Attorney, Youth in Out-of-Home Care Project

Alya’s story is not unique. Across the United States, many LGBTQ teenagers are living out of home because their families have been hostile to their sexual orientation or gender identity. Some were forced to escape abusive families who wanted to punish or “cure” them from homosexuality. Others were sexually molested. As a result, LGBTQ youth are overrepresented among child welfare, juvenile justice and homeless systems of care, and they live with an increased risk of depression, physical or emotional abuse, rape, unethical “conversion therapies,” prostitution, substance abuse and suicide.

It is also not uncommon for LGBTQ youth to be harassed, rejected and abused by youth, staff and caretakers in the child welfare system itself. Alya is only one out of thousands of LGBTQ youth in Puerto Rico’s foster child population (7,572 children — with only 3,005 placed with caretakers) who face these challenges without supportive adults who can help them feel more comfortable with questioning, identifying and accepting their sexual orientation.

Alya also faces a myriad of class, cultural and religious barriers to acceptance in her community. Most foster children come from poor families who experience higher rates of unemployment, substandard housing, poor health, inadequate medical insurance and early death. Cultural biases and prejudices can take time and effort to unleash: those struggling through poverty are less likely to prioritize that education.

Models of Compassion

Antigay religious views can also factor into the lack of acceptance and support for LGBTQ individuals within Latino culture. Puerto Ricans on the island are increasingly turning to religions where teachings such as “blame and shame” gays and lesbians. But it would be a mistake to accuse all religious people — even clergy members — of intolerance. As I talked with Crespo, three nuns came into the room looking for promotional T-shirts for the recruitment campaign. The nuns are motivated by their religious commitment to provide food and other developmental services to the foster youth in the custody of ADFAN. The nuns showed genuine interest when I began talking about Lambda Legal’s efforts to protect and reach youth in out-of-home care. They listened attentively and expressed their commitment to welcome and affirm LGBTQ youth who access their services. When I told them about Alya, they identified similar cases and detailed their experience as advocates for their care.

I was inspired to see that these women were motivated by their religious faith to serve LGBTQ youth. The nuns appeared to be role models and mentors for agencies and individual caregivers struggling to bridge the gap between religious beliefs and professional standards of care. Crespo said, “I wish many of our staff were as open-minded and accepting as these nuns. The system would be very different.” ADFAN officials worry that well-intentioned caseworkers try to change young people’s sexual orientation instead of acknowledging it. We suggested that the agency’s policy be clear: negative behaviors and attitudes towards LGBTQ people are not tolerated. We also recommended the implementation of staff-wide training so that all workers could learn to identify warning signs that a young person may be experiencing mistreatment or antigay abuse, so they can learn to effectively intervene on behalf of victims.
The dialogue with ADFAN has brought Lambda Legal's Youth in Out-Of-Home Care Project closer to its core mission: to increase the will and capacity of youth-serving organizations that prepare and support LGBTQ youth as they transition from adolescence to independence. We also work with social workers, case managers, administrators and other child welfare advocates to ensure safe and affirming child welfare services for LGBTQ youth in out-of-home care, the majority of whom are people of color. Next steps in our effort to assist Puerto Rico’s child welfare system will be identifying appropriate resources and training needs, and securing additional funding.

Happily, one day young Alya and others like her can lead stable, happy lives in their local communities and even, perhaps, feel empowered to join Puerto Rico’s thriving population of LGBT activists.

The Youth in Out-Of-Home Care Project also brings targeted impact litigation to protect the rights of LGBTQ youth in out-of-home care and to set legal precedents nationwide. In 2006 Lambda Legal and the Silvia Rivera Law Project sued the New York Office of Children & Family Services (OCFS) on behalf of a transgender young person who was not receiving adequate medical treatment while in OCFS custody. The parties eventually reached a favorable settlement that included monetary damages and a commitment by OCFS to evaluate its policies with an eye toward improving its ability to support and protect transgender young people in its care.

A Movement Grows

Although Puerto Rico’s child welfare system has just begun to transform, the last few years have seen some major progress for LGBT civil rights in Puerto Rico. Puerto Rico decriminalized homophobia in 2005. There are now hate crime laws that include protections for both sexual orientation and gender identity. Around 2005, the University of Puerto Rico became the first governmental institution to prohibit discrimination based on sexual orientation, and other colleges and universities soon followed.

On my last day in Puerto Rico, I joined a demonstration organized by the Human Rights Foundation. People protested a Senate proposal to amend the constitution to ban marriage between persons of the same sex. Francisco Dueñas, Lambda Legal’s Puerto Rico Coordinator, was by my side. He had joined this event to establish new contacts with Puerto Rico’s child welfare system, so that one day young Alya and others like her can lead stable, happy lives in their local communities and even, perhaps, feel empowered to join Puerto Rico’s thriving population of LGBT activists. Their voices — strong and supported by a secure and loving foundation — will further aid the growing LGBT civil rights movement in Puerto Rico.

1973: Gay Student Organization v. Banner

“An explosion,” said a New Hampshire Governor. In 1973, Governor Meldrim Thomson, Jr., condemned a gay student dance at the University of New Hampshire. He declared this “indecency” and ordered that “any student who shall go to or in any way support, sponsor, or promote any of the above activities” be expelled.

Lambda Legal argued that the school had failed to follow its own procedures, which included a rule that the college would follow community standards. Lambda Legal and E. Carrington Boggan filed a friend-of-the-court brief, arguing for full recognition of the gay plaintiffs’ First Amendment rights to meet, speak and socialize. With unflinching language, just before the year 1975 rang in, the court lifted the ban on gay student social activities, agreeing with Lambda Legal that: “...homosexuals exist, that they feel repressed...that they wish to emerge from their isolation.”

1974: Parent and Children

One early request for Lambda Legal’s help concerned the case of Alya DiStefano, a young Puerto Rican woman who had been arrested while engaged in a family court judge who ordered visitation could be allowed only if DiStefano’s lesbian partner was not allowed in the home. Lambda Legal argued that the family court judge erred in saying that DiStefano’s “...admission of homosexuality...is a deterrent” and that the judge’s order was an attempt to “...deny Alya DiStefano the rights of LGBT parents...”

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Lambda Legal secured the legal right to order that Alya DiStefano be allowed to have visitation with her daughter, including her lesbian partner, but the court also ruled that the child must be housed separately.

1974: Puerto Rico’s thriving population of LGBT activists.

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As we celebrate our history, our eyes are on the future.