

**THE DEMISE OF DISABILITY-INCLUSIVE POLICIES FOR CHILDREN WITH DISABILITIES IN PUERTO RICO**

Written submission prepared by the

**International Human Rights Clinic**

**at Santa Clara University School of Law**

before the

UN SPECIAL RAPPORTEUR ON THE RIGHTS OF PERSONS WITH DISABILITIES

for her

QUESTIONNAIRE FOR THE STUDY

ON DISABILITY-INCLUSIVE POLICIES

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Clinic Director

Francisco J. Rivera Juaristi

Supervising Attorney

Britton Schwartz

Student Attorney

Cindy Chu

UN Special Rapporteur on the Rights of Person with Disabilities

Office of the High Commissioner for Human Rights

Special Procedures Branch, Palais Wilson

CH – 1211, Geneva

Switzerland

***Submitted via email to***: sr.disability@ohchr.org

***CC***: registry@ohchr.org

Dear Special Rapporteur Devandas:

In response to the questionnaire circulated by your mandate soliciting information about disability-inclusive policies, the International Human Rights Clinic at Santa Clara University School of Law (the Clinic)[[1]](#footnote-1) welcomes the opportunity to provide information on the failure of both the U.S. and Puerto Rican governments to provide adequate, timely, or consistent special education services and programs to children with disabilities in Puerto Rico, despite a multi-billion dollar education budget and significant funding by the federal U.S. government,[[2]](#footnote-2) under the Individuals with Disabilities Education Act (IDEA),[[3]](#footnote-3) to further such purposes. We believe it is particularly important to bring this issue to the attention of the United Nations Human Rights Council (UNHRC), presently, because:

(1) the U.S. government’s federal monitoring process under IDEA has not been effective in ensuring that the Puerto Rico Department of Education (PRDE) properly monitors and implements services and programs intended to improve academic development and functional outcomes for children with disabilities in Puerto Rico; and

(2) as a result of the current economic crisis, Puerto Rico is closing hundreds of public schools and refusing to provide or pay for services for children enrolled in special education.

Over the past two years, the Clinic has engaged in fact-finding and research to investigate the continuing lack of access to special education services and related programs faced by children with disabilities in the Commonwealth of Puerto Rico. Although the District Court of San Juan issued a consent decree requiring PRDE to provide adequate educational and related services to all children with disabilities in a 2002 judgment in the Rosa Lydia Velez class action,[[4]](#footnote-4) the court has consistently found PRDE to be in violation of this order. Rather than reform its programming, PRDE pays a substantial daily fine to the court for its refusal to provide adequate services. The Clinic has investigated this situation through legal and factual research, including field visits to Puerto Rico and in-depth interviews with legal aid and disability rights attorneys, parents and families of children with disabilities, and local advocacy non-profits in Puerto Rico, as well as senior government staff at the federal level responsible for overseeing the monitoring and implementation of IDEA. Through this work, we have gained insight into both the systemic challenges of the Commonwealth and specific administrative problems causally connected to the improper monitoring and implementation of IDEA by PRDE and the federal U.S. government.

Our investigation focused specifically on the monitoring and implementation of IDEA because IDEA funds make up the majority of funds used to support special education programs in Puerto Rico. The responses below highlight problems with special education program and service delivery that demonstrate the ineffectiveness of the federal monitoring process and the need for better remedies to ensure PRDE uses IDEA funds to achieve their purpose of improving education and related services for children with disabilities. This submission does not answer each question individually but rather provides information that is responsive to the range of questions posed in the questionnaire.

In our submission, we have highlighted the hindrances to proper implementation of IDEA and services required under U.S. federal and Puerto Rican law, including the Rosa Lydia Velez class action consent decree, including: an inefficient and entrenched bureaucracy; insufficient parent and child representation or involvement in the development of special education monitoring, reporting, and planning; and lack of individualized education programs, ongoing evaluations, and on-site school visits, to ensure proper implementation of special education programs. We further highlight the types of services that PRDE fails to provide or perform adequately, and the resulting mistreatment, discrimination, and barriers to access to education and basic development services for children with disabilities in Puerto Rico.

We hope that this submission may be helpful to the development of the Special Rapporteur’s report on disability-inclusive policies, and we welcome any opportunity to provide further information to the Special Rapporteur. Attached to this response are copies of the IDEA statute and regulations, the Rosa Lydia Velez class action consent decree, and a report which may provide a useful supplement to this submission, which reflects the Clinic’s research, findings and recommendations, emphasizing the need for parent involvement to improve the federal monitoring process and ensure PRDE’s compliance with laws protecting children with disabilities in Puerto Rico. Please do not hesitate to contact us if we can provide any additional information or support.

Sincerely,

Francisco Rivera, Britton Schwartz, Cindy Chu and the Santa Clara Law International Human Rights Clinic

Responses to questionnaire on disability-inclusive policies

1. **IDEA’s monitoring process is insufficient to ensure proper implementation and prevent Puerto Rico from violating local and federal laws protecting children with disabilities.**

While the Puerto Rico Department of Education (PRDE) is constitutionally committed to providing equal access to an education “directed to the full development of the human personality and to the strengthening of respect for human rights,” its national strategy has been to find ways to delay and avoid providing appropriate or timely special education programs, services, and accommodations to children with disabilities in Puerto Rico. This has resulted in numerous ongoing violations of the rights of children and persons with disabilities in Puerto Rico.

* PRDE wastes federal education funds intended for the improvement of outcomes for children with disabilities.

Instead of using IDEA funding to train teachers and school staff or improve academic outcomes for special education students, the Commonwealth instead uses the money to:

(1) pay U.S. District Court-ordered fines of $10,000 a day for failure to comply with the 35-year old Rosa Lydia Velez class action consent decree against PRDE demanding adequate administration of special education services, on behalf of all children with disabilities in Puerto Rico;

(2) reimburse parents for services that they have to independently seek from unmonitored and unsupervised private service contractors, because PRDE has chosen to shut down hundreds of schools and in-school special education programs and services;[[5]](#footnote-5) and

(3) provide services to children without disabilities – PRDE has acknowledged that due to lack of ongoing evaluation, they have over-identified the percentage of children with disabilities in Puerto Rico (26.8%), which is currently double that of any U.S. state with disabilities.

* PRDE’s existing mechanisms and frameworks to monitor implementation of special education programs and services are broken.

PRDE is required, under IDEA to monitor the implementation of programs and services provided by schools. Because Puerto Rico is governed by a unitary system, however, decisions cannot be made at the local level and must go through a long bureaucratic chain of command. This results in administrative backlogs, delayed due process hearings, and irregular on-site visits, necessary to evaluate teachers and staff and ensure they are properly trained.

A central administration hub handling the entire region’s student records must have an extremely organized system to manage all that information. PRDE, however, has failed to even digitize their documentation; parents and teachers report that as a result registration is delayed and records frequently go missing.[[6]](#footnote-6) PRDE also fails to provide ongoing evaluations of students to ensure that they are properly placed or achieving their Individualized Education Plan[[7]](#footnote-7) (IEP) goals, established during their initial evaluations.

With 62,000 employees and one-third of the island’s entire gross domestic budget, this is not a product of inadequate funding but rather of PRDE’s bureaucratic inefficiencies and alleged corruption.

* Children with disabilities and their families are not ensured adequate participation in the development and implementation of the IDEA monitoring process.

PRDE does not have a framework or mechanism in place to solicit parent feedback for IDEA monitoring purposes; nor do they meaningfully facilitate parent involvement in the development process. The few parent training institutes that do exist to help parents navigate their children’s rights are funded directly from the federal office monitoring IDEA and not PRDE.

While PRDE conducts due process hearings to respond to parent’s complaints, these hearings are neither timely nor effective and were only implemented in response to the Rosa Lydia Velez class action. Consequently, individual parents of children with disabilities – at least those who have the resources or capacity to do so – spend years trying to vindicate their children’s right to education in administrative procedures and appellate courts, while their children lose critical years of their education. Parents and advocates report that even after the court decides in their favor, children frequently wait months or years to receive necessary services and many even age out of the education system while claims are pending.

Proper and appropriate implementation of special education services in Puerto Rico will not be possible without greater parent and child representative involvement in the monitoring process. Simply ensuring consistent services is a frustrating process for parents that involves bringing the same claim repeatedly, despite prior successful petitions based on the same claim. Due process hearings, therefore, have not been an effective vehicle for systemic improvements.

2. **PRDE’s denial of reasonable accommodations and learning environments for children with disabilities amounts to discrimination.**

Under local laws and IDEA regulations (CFR § 300.114), children with disabilities have the right to an education in the “least restrictive environment,” which means that where appropriate, children with disabilities must be educated together with children who are nondisabled. This is meant to promote the growth and development of the child and prevent undue segregation. Many schools in Puerto Rico do not comply with these laws.

A Puerto Rican schoolteacher and father of a child with autism recalls the day when he found his son by himself “locked in a cage,” being taunted by children who threw things at him as they walked by his “classroom.”[[8]](#footnote-8) The teachers had taken the rest of the class to lunch and left him there.

Because most teachers in Puerto Rico are not properly trained on their legal obligations to students with special needs[[9]](#footnote-9), children with disabilities in Puerto Rico, especially those who exhibit behavioral problems, are disproportionately discriminated against and mistreated.

3. **Schools in Puerto Rico lack the appropriate equipment and technology to ensure accessibility for children with disabilities** **in Puerto Rico.**

PRDE does not provide appropriate accessibility to ensure access to equal educational opportunities. Recently, the federal government flagged delays in the delivery of learning technology such as computers and microphones to assist students with special needs. In addition, the wheelchairs provided by PRDE are generally of poor quality and fall apart easily. Parents’ and teachers’ requests for better equipment have been unsuccessful.

Lack of accessible school transportation is a significant barrier, especially for children in rural areas. Puerto Rico’s varied geography makes it difficult for PRDE to communicate with students and families attending schools in rural areas. Therefore, children with disabilities in rural areas are often deprived of their right to a “free appropriate public education,” (CFR § 300.101) while they wait for PRDE to address their unmet needs. This problem will only get worse as Puerto Rico’s financial problems are forcing the government to shut-down many of their public transportation programs.

4. **PRDE does not provide adequate support services for children with disabilities.**

Local non-profits in Puerto Rico that provide disability rights advocacy and assistance report that individuals with disabilities in Puerto Rico have few employment opportunities because intense stigma surrounding disabilities prevails in Puerto Rican society. PRDE does not provide education or build awareness around the issue in order to dispel this stigma and promote more opportunities for graduates with disabilities.

Of even greater concern is the fact that PRDE does not provide a sufficient quantity of in-school services and programs to meet all special education needs.[[10]](#footnote-10) As a result, parents have to seek services outside of the school, which results in significant interruptions of their child’s education. PRDE consistently delays or fails to compensate providers for these services, which results in further interruptions or the loss of the service entirely. Moreover, these services are provided by private contractors that are not monitored by PRDE, and therefore also evade the federal monitoring process. In essence, the federal government is providing funds to PRDE for services that are not being monitored and, in many cases, that are not being provided at all.

Even though most private contractors probably intend to help the child, they are restricted from providing adequate services due to lack of training by PRDE and insufficient reimbursement payments by PRDE. Parents and advocates report that private service providers notoriously perform Individualized Education Program (IEP) evaluations, 6-7 students at a time because they are not receiving sufficient funding from PRDE to provide *individualized* evaluations. The lack of individually tailored plans delays the progress of special education students which affects them not only academically but emotionally as well.

5. **Other relevant information regarding the** **implementation of existing disability-inclusive policies and action plans in Puerto Rico.**

Although the Rosa Lydia Velez class action demonstrates that Puerto Rico has been failing to provide adequate services to children with special needs for several decades, the current economic crisis faced by the Commonwealth has exacerbated these violations. Puerto Rico is experiencing what has been described as the worst economic situation in its history, precipitated by high levels of public debt and declining public revenues; the U.S. Department of Treasury has warned this situation could become a humanitarian crisis due to the severe cuts to public services made as a result of austerity measures implemented to address the crisis.[[11]](#footnote-11) These austerity measures, which include the closure of hundreds of public schools and the Department of Education’s refusal to pay for services for children enrolled in the special education program,[[12]](#footnote-12) have had a discriminatory impact on children with special needs, particularly the large majority from low-income families.[[13]](#footnote-13) As a result, it is particularly critical that your mandate shine a spotlight on the failure of the U.S. and Puerto Rican governments to ensure that children with disabilities receive appropriate educational services.

These responses are submitted by the Santa Clara Law International Human Rights Clinic. A more in-depth account of issues and concerns, that includes recommendations for improving the federal monitoring process, has been attached to the email in which this document is enclosed. Please email ihrc@scu.edu for more information.

For more information on Puerto Rico’s local disability rights policy and legislation, please contact: Puerto Rican disability rights attorney, Osvaldo Burgos, at oburgosperez@gmail.com; Rosa Lydia Velez class action attorney, Jose Torres, at jose@marquezytorres.com; or Director of Apoyo a Padres de Niños con Impedimentos, Celia Galan, at celia@apnipr.org. If you are interested in conducting a country visit to Puerto Rico to investigate the situation further, we would be happy to assist in coordinating such a visit.

Thank you for your consideration. Children with disabilities in Puerto Rico are in need of better remedies to improve the protection of their rights and the monitoring and implementation of special education programs. We hope that in addition to including our comments in your report to the UNHRC, you will seriously consider investigating the issues addressed above.

Sincerely,

Francisco Rivera, Britton Schwartz, Cindy Chu and the Santa Clara Law International Human Rights Clinic

1. The Clinic at Santa Clara University provides students of Santa Clara Law the opportunity to gain unique, practical, and supervised experience working on cases and projects of human rights violations. The students work together with human rights organizations and experts, primarily in the United States and Latin America, through research, litigation, fact-finding, writing briefs, and advocacy. The Clinic aims to inspire students to become ethical and professional human rights advocates and advance Santa Clara University’s social justice values. [↑](#footnote-ref-1)
2. Puerto Rico is a U.S. territory, governed by the U.S. government. This means that in addition to being entitled to federal funding, most federal laws apply to the Commonwealth, including the requirements and regulations attached to federal education funding programs like the Individuals with Disabilities Act (IDEA). While Puerto Ricans are considered natural-born citizens of the U.S., they do not have the right to vote at the national level. The island is evenly split between supporters and opposers of full statehood status. [↑](#footnote-ref-2)
3. IDEA is a U.S. federal education grant established in the early 1990s to support the improvement of special education services and related programs in U.S. states and territories, and to ensure better academic results and functional outcomes for children with disabilities. Puerto Rico currently receives over $115 million in IDEA funding from the federal U.S. government. IDEA federal statute and regulations are available at: http://idea.ed.gov/explore/home; electronic copies have also been attached to the email transmitting these questionnaire responses. [↑](#footnote-ref-3)
4. For details, see the attached electronic copy. [↑](#footnote-ref-4)
5. According to current estimates accepted by government officials, PRDE owes more than US $20 million in unpaid fees to service providers for children with special needs. EFE, Servicios de Educación Especial afectados por falta de liquidez en Puerto Rico, 18 January 2016, available at <http://www.univision.com/noticias/educacion-especial/servicios-de-educacion-especial-afectados-por-falta-de-liquidez-en-puerto-rico>. [↑](#footnote-ref-5)
6. See the documentary film, “La Otra Educacion” for more stories from parents and advocates in Puerto Rico: https://www.youtube.com/watch?v=q1tordv8sOo [↑](#footnote-ref-6)
7. An Individualized Education Plan (IEP) is a legal document, required under the Individuals with Disabilities Education Act that spells out a child’s learning needs, the services the school will provide, and how the child’s progress will be measured. The school is required to meet with the child’s education right’s holder annually to review compliance with the IEP and alter it as needed. [↑](#footnote-ref-7)
8. See full story in “La Otra Educacion” starting at approximately 46 minutes into video available at: https://www.youtube.com/watch?v=q1tordv8sOo [↑](#footnote-ref-8)
9. According to a poll by the Puerto Rico Senate’s Commission on Social and Community Welfare, 95% of teachers said they lack sufficient understanding of what they are required to do under local and federal laws created to serve and protect the rights of children with disabilities [↑](#footnote-ref-9)
10. In response to the current economic crisis, PRDE is in the process of shutting down hundreds of schools, and has been redistributing special education students to remaining school locations without increasing special education staff or programs to accommodate the influx of special education students. [↑](#footnote-ref-10)
11. Everett Rosenfeld, CNBC News, “Puerto Rico could become ‘humanitarian crisis’: Treasury Counselor,” 22 Oct. 2015, available at http://www.cnbc.com/2015/10/22/puerto-rico-could-become-humanitarian-crisis-treasury-counselor.html. For more information about the crisis, see White House, Fact Sheet on Addressing Puerto Rico’s Economic and Fiscal Crisis and Creating a Path to Recovery: Roadmap for Congressional Action, available at https://www.whitehouse.gov/sites/default/files/roadmap\_for\_congressional\_action\_\_\_puerto\_rico\_final.pdf. [↑](#footnote-ref-11)
12. See Cándida Cotto, Claridad, “Educación Especial Los chavos ¿dónde están?,” 10 May 2016, available at http://www.claridadpuertorico.com/content.html?news=1864302196DA90C9A964C718A6E61099. [↑](#footnote-ref-12)
13. For more information about the human rights impacts of the austerity measures in Puerto Rico, see IACHR, Thematic Hearing on Deuda pública, política fiscal y pobreza en Puerto Rico (4 April 2016), available at https://www.youtube.com/watch?v=EuLix5Bv8rM. [↑](#footnote-ref-13)