



2 maintains, violate NLCB. Id. Relatedly, the plaintiff alleges that the director and the  
3 “Coordinator of Title I-Phonogram from Educative Region of Caguas” changed the conditions  
4 of her contract, thereby violating the procedures mandated by Title I of NLCB. According to  
5 the complaint, the plaintiff was not paid \$4,200 for professional services rendered with the  
6 Department in the summer of 2010. She requests one million dollars in economic and emotional  
7 damage, as she suffered “serious discrimination and labor persecution.” Docket # 2, p. 4.

8 On December 14, 2012, the defendants moved to dismiss under 12(b)(1), arguing that  
9 neither Title I nor NLCB “confer a private cause of action, and plaintiff’s allegations are but  
10 a breach of contract and state tort claim.” Docket # 17, p. 102. The defendants also argue that  
11 the plaintiff’s damages claim is time barred and contravenes the Eleventh Amendment. Id. The  
12 plaintiff resists dismissal, arguing that because the funds used to pay her contract derive from  
13 the Office of Federal Affairs, the Court has jurisdiction to entertain the controversy. Docket #  
14 18.

14 **Standard of Review**

15 Fed. R. Civ. P. 12(b)(1) is the appropriate vessel for challenging a court’s subject-matter  
16 jurisdiction. Valentín v. Hospital Bella Vista, 254 F.3d 358, 362-63 (1st Cir. 2001). In  
17 reviewing a motion to dismiss under this rule, the court construes the plaintiffs’ allegations  
18 liberally and “may consider whatever evidence has been submitted, such as . . . depositions and  
19 exhibits.” Carroll v. United States, 661 F.3d 87, 94 (1st Cir. 2011) (internal quotation marks and  
20 citations omitted). Accordingly, this court is empowered to “[w]eigh the evidence and make  
21 factual determinations, if necessary, to determine whether it has jurisdiction to hear the case.”  
22 Massachusetts Delivery Ass’n v. Coakley, 671 F.3d 33, 40 n. 8 (1st Cir. 2012) (citing Torres-  
23 Negrón v. J & N Records, LLC, 504 F.3d 151, 163 (1st Cir. 2007)). When faced with a  
24 jurisdictional challenge, importantly, courts must credit the plaintiffs’ well-pleaded factual  
25 averments and indulge every reasonable inference in the pleader’s favor. Merlonghi v. United  
26 States, 620 F.3d 50, 54 (1st Cir. 2010) (citing Valentin, 254 F.3d at 363). A plaintiff faced with  
subject-matter jurisdiction challenge has the burden to demonstrate its existence. Johansen v.

2 United States, 506 F.3d 65, 68 (1st Cir. 2007) (citations omitted). But in order for a plaintiff’s  
3 claim to be dismissed for lack of subject-matter jurisdiction, due to the inadequacy of the  
4 plaintiff’s federal claim, that claim must be “so insubstantial, implausible, foreclosed by prior  
5 decisions of . . . [the Supreme Court], or otherwise completely devoid of merit as not to involve  
6 a federal controversy . . . .” Oneida Indian Nation of N.Y. v. County of Oneida, 414 U.S. 661,  
666 (1974).

7 **Applicable Law and Analysis**

8 Federal question arises when a plaintiff sets forth allegations founded on a claim or right  
9 arising under the Constitution, treaties or laws of the United States. See 28 U.S .C. § 1331.  
10 Because federal courts are “courts of limited jurisdiction,” Kokkonen v. Guardian Life Ins. Co.  
11 of America, 511 U.S. 375, 377 (1994), for a claim to arise under federal law, “a right or  
12 immunity created by the Constitution or laws of the United States must be an element, and an  
13 essential one, of the plaintiff’s cause of action.” Gully v. First Nat’l Bank in Meridian, 299 U.S.  
14 109, 112 (1936). As relevant here, private rights of action to enforce federal law must be created  
15 by Congress. Touche Ross & Co. v. Redington, 442 U.S. 560, 578 (1979); see also Mims v.  
16 Arrow Financial Services, LLC, 132 S.Ct. 740, 748 (2012) (“A suit arises under the law that  
17 creates the cause of action.” (quoting American Well Works Co. v. Layne & Bowler Co., 241  
18 U.S. 257, 260 (1916))). It thus follows that, “[w]ithout [statutory intent], a cause of action does  
19 not exist and courts may not create one, no matter how desirable that might be as a policy  
20 matter, or how compatible with the statute.” Alexander v. Sandoval, 532 U.S. 275, 286-87  
(2001).

21 The NCLB, which focuses strengthening elementary and secondary schools, “is a  
22 comprehensive education reform statute.” Ass’n of Cmty. Organizations for Reform Now v.  
23 New York City Dept. of Educ., 269 F. Supp. 2d 338, 340 (S.D.N.Y. 2003) (citing 20 U.S.C. §§  
24 6301(1)-(12)). Here, the plaintiff posits that the fact that federal funds are at play here  
25 automatically confer this court with jurisdiction under NLCB. This argument is without merit.  
26 As a threshold matter, she has cited no authority standing for such a proposition. And it turns

2 out that quite the opposite is true: Every court that has considered whether NCLB provides a  
3 private cause of action has decided it does not. E.g., Horne v. Flores, 557 U.S. 433, 456 n. 6  
4 (2009) (noting that “NCLB does not provide a private right of action” and is “enforceable only  
5 by the agency charged with administering it”) (citations omitted); Blakely v. Wells, 380 F.  
6 App’x 6, 8 (2d Cir. May. 28, 2010) (unpublished). The plaintiff, then, cannot shoulder her  
7 burden of providing the existence of subject-matter jurisdiction, as her claim is indeed “  
8 insubstantial, implausible . . . [and] completely devoid of merit as not to involve a federal  
9 controversy . . . .” Oneida Indian Nation of N.Y., 414 U.S. at 666.

10 Finally, the plaintiff’s cursory and undeveloped mentions to “serious discrimination and  
11 labor persecution,” and to “Civil Rights and the US Equal Opportunity Federal Law” are plainly  
12 insufficient to survive dismissal. She makes absolutely no allegations explaining how she was  
13 discriminated against, and whether such discrimination falls under a protected category. In any  
14 event, because these allegations were not even pled as a claim, they must be dismissed.  
15 Marrero-Rodriguez v. Municipality of San Juan, 677 F.3d 497, 501 (1st Cir. 2012). The  
16 plaintiff’s pro se status does not insulate her from complying with basic pleading requirements.  
17 Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997) (“Pro se status does not insulate a party  
18 from complying with procedural and substantive law.”). Accordingly, such generalities fall way  
19 short of stating a plausible entitlement to relief. See Liu v. Amerco, 677 F.3d 489, 497 (1st Cir.  
20 2012).

21 To be sure, the Court sympathizes with the plaintiff’s toll. “But sympathy . . . is not a  
22 sound basis for administering a system of justice,” Sheet Metal Workers’ International Asso.  
23 v. Carter, 450 U.S. 949, 953 (1983) (Rehnquist, J., dissenting), and there being no jurisdictional  
24 basis, the Court is simply without authority to entertain her claims. This court takes very  
25 seriously its responsibility to preserve its legitimacy by respecting the limits of its jurisdiction.  
26 Having established a lack of jurisdiction, the Court need not entertain the defendant’s other  
arguments.

2 **Conclusion**

3 For the reasons stated, the defendants' motion to dismiss is **GRANTED**. Consequently,  
4 this case is **DISMISSED without prejudice**.

5 **IT IS SO ORDERED.**

6 In San Juan, Puerto Rico, this 14th day of January, 2013.

7 *S/Salvador E. Casellas*  
8 **SALVADOR E. CASELLAS**  
9 **U.S. Senior District Judge**

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26