

ABSTRACT
NM SEA DPH No. 1213-14

Request for Due Process denied. Nine year old fourth grade Student eligible for services as SDL (basic reading and fluency) removed from any educational setting by parent/guardian for fear of bullying; has not returned to school or any educational setting or had special education services for about seven months. State truancy actions initiated against parent/guardian. Student withdrawn from LEA's rolls after ten days absenteeism.

Among other things, major issues held that: (1) Student is ineligible for services under serious emotional disturbance; individual private therapist not a qualified evaluator, did not use assessment tools, or make determination; no IEE presented by Student; Psychological evaluation conducted by LEA recommended Student ineligible under serious emotional disturbance. (2) Giving deference to LEA's investigations, Student was not bullied. (3) Under New Mexico law, Student's withdrawal from LEA's rolls not a change in placement ((as compared with Pennsylvania law under *R.B. v. Mastery Charter Sch., et al*, 762 F. Supp. 2d 745 (E.D. Pa. 2010)). (4) Student not entitled to post-hearing placement in private school setting, employing standard under *Burlington*, 471 U.S. 359 (1985), as persuasive in post-hearing private placement analysis, by finding LEA's IEP appropriate and the proposed placement inappropriate. (5) No denial of FAPE.

DPHO Morgan Lyman
4.12.2013