

# Judge orders schools: Take hepatitis carriers

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A federal judge ordered the Board of Education yesterday to reinstate 52 children and young adults the board had barred from attending city schools because they are hepatitis carriers.

But Robert Terte, a spokesman for the Board of Education, said that the pupils, all of whom are mentally retarded, would probably be turned away from classes today if their parents take them to school.

Terte said that Board of Education attorneys needed time to study the impact of the decision and determine whether to appeal to a higher court.

In his decision, Brooklyn Federal Court Judge John R. Bartels said that the Board of Education illegally discriminated against the 52 students in denying them admission to special education classes that began Monday.

He ordered the Board of Education to reinstate the students to their classrooms and ruled that the board must end its policy of banning students identified as hepatitis carriers. The ban was implemented Monday by the Board of Education.

Bartels said there is no substantial medical risk "that justifies their discriminatory exclusion from the benefits of a public school education, particularly in view of the unavoidable and irreparable harm such exclusion would work on the students involved."

The judge said that with proper supervision, there was little risk that the pupils, most of whom are former residents of the Staten Island Developmental Center, would transmit hepatitis to fellow students. The Board of Education maintained it had weighed "health and safety" considerations in deciding to ban the pupils.

In granting a permanent injunction

against the school ban, Bartels was acting on the request of Christine West of Brooklyn, whose son was denied admission to a public school because he is a carrier of the disease.

She was joined in the court challenge by Thomas A. Coughlin, commissioner of the state Office of Mental Retardation and Developmental Disabilities, and the Willowbrook Review Panel, a court-appointed monitor.

As carriers, the students do not have the disease, but can, through blood contact, transmit it. Several Board of Education witnesses also said that the disease could be transmitted through the transfer of saliva from a carrier to a non-carrier child.

The disease, commonly associated with large institutions, can cause nausea, jaundice and liver damage.

In his decision, Bartels, who has heard most federal cases involving the former Willowbrook State School, did not say whether pupils must be integrated with other special education students or placed in separate classes.

Last October, the Board of Education segregated three carrier pupils at PS 69, Merrymount Ave., New Springville, after parents at the school expressed concern that hepatitis might be transmitted to their youngsters.

At the time, the Board of Education announced plans to develop a citywide policy concerning hepatitis carriers in public schools. That policy, revealed Saturday in Mailgrams sent to parents of the 52 carrier students, banned the students from city schools.

A law clerk for Bartels said the judge left it up to the Board of Education to determine the conditions in which the students should be admitted to the schools.

If there are objections to "those conditions," the aide said Bartels would consider a request for another injunction.