

Judge refuses to OK plan to isolate hepatitis carriers

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The Board of Education yesterday asked Brooklyn Federal Judge John R. Bartels to approve a plan to isolate students identified as hepatitis carriers in separate classrooms within the city schools.

The request by Board of Education attorneys followed the judge's decision Thursday ordering the board to reinstate 52 children and young adults the board had barred from attending city schools because they are hepatitis carriers.

Bartels rejected the request because, he said, it would be inappropriate for him in effect, to set Board of Education policy. He left the door open, however, for a court challenge if the board goes ahead with the plan to isolate the carrier students.

The judge also rejected a Board of Education request that would allow the board to delay reinstating the 52 students until November. The Board of Education said it needed the time to set up

separate classroom facilities for the carrier students.

In explaining Bartel's decision, his law clerk said that the judge does not have the authority to set specific conditions for the reinstatement of the students. If there are objections to "those conditions," the aide said Bartels would consider a request for another injunction.

In his Thursday decision, 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."

Bartels was acting on the request of a parent of a carrier child barred from the opening of special education classes Monday. The parent was joined by officials 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. The disease, common-

ly associated with large institutions, can cause nausea, jaundice and liver damage.

Robert Terte, the Board of Education spokesman, said yesterday the board has not decided whether to appeal the judge's ruling or comply with the order.

Frank Kelly, principal of PS 69 Merrymount Ave., New Springville, where three carrier pupils, all severely retarded, have been excluded from special education classes since the opening day of school Monday, said he is waiting for a Board of Education directive on whether to readmit the students.

The three children were placed in a separate classroom with a volunteer teacher last October, after parents at the school expressed concern that hepatitis might be transmitted to their youngsters. It was the only city school where carrier students were segregated in separate classrooms.

The controversy at PS 69 resulted in a promise by the Board of Education to develop a citywide policy for hepatitis carriers. That policy, calling for a ban on carriers of the disease from city schools, was implemented Monday.