

# Court Mandates No Segregation Of the Retarded

## Bars a Proposal of Schools on Hepatitis Carriers

A Federal judge ruled yesterday against a New York City Board of Education proposal to segregate mentally retarded children who are carriers of hepatitis B from other public-school children. The judge contended there was no evidence their presence had or would spread the viral disease.

Judge John R. Bartels, in Brooklyn, held such segregation would violate the retarded children's rights to education in "the least restrictive environment" fitting their needs.

He cited a "potentially devastating impact of the stigma caused by isolating these children" that could cause regression in their development and undermine job and community placement efforts on behalf of retarded persons generally.

The decision said there were "simple prophylactic and classroom-management measures which it is in the Board of Education's power to take," and added that neither the Federal Center for Disease Control nor the State Office of Mental Retardation had recommended segregation.

### Linked With Willowbrook

The issue arose out of the efforts under way since 1972 to move retarded patients out of the state's huge Staten Island Developmental Center at Willowbrook.

Judge Bartels said the school board had planned to reassign 48 mentally retarded children identified as hepatitis B carriers into nine special classes, at least one in each borough. He said the board had estimated 60 to 90 more would enter public schools in the near future.

He noted that he had initially enjoined a similar proposal last September when the plan had drawn objections from Thomas A. Coughlin 3d, the state's mental-retardation commissioner, who is under the court's orders to carry out community placements from Willowbrook.

Judge Bartels said hepatitis B, unlike the more commonly known hepatitis A, "is of limited communicability," although an increased risk may be associated with crowded, unhygienic conditions. Primary transmission, he said, is by blood contact through transfusions or needles, with some belief he termed not conclusive that it could be transmitted through such body fluids such as saliva.

### Infection Reported

The 51-page decision related that a Health Department team under Dr. John S. Marr, principal epidemiologist, had investigated a report that a special education teacher in Staten Island had become infected in 1977.

It turned out that hepatitis A was involved. But the team observed "such unhygienic behaviors among students as slobbering, kissing, biting, mouthing of objects and scratching," and concluded "there was significant possibility of transfer of hepatitis B" in classes.

The department convened six experts, the decision went on, and these recommended that retarded carriers be separated from other students in classes, lunch and recess. They also called for instructing teachers in the problem, cleaning environmental surfaces and providing handwashing facilities in each classroom.

Nevertheless, Judge Bartels said Dr. Marr had testified that any risk was "low," and the Board of Education had been unable to show a single case of transmission although many of the carrier children had been in school for several years.

### Basis for Ruling

Further, the judge said, Dr. Jennifer Howse, associate state mental retardation commissioner, had testified that since 1975, 130 carriers had been placed in community and family homes without reported infections.

Among a million public-school children, the judge went on, no other group had been tested nor was any action planned against any hepatitis B carriers other than the 48 in the court case.