

# Judge bars 96 transfers from Willowbrook to Bronx

By ROBERT MIRALDI  
and HARRY LEICHTER

A federal judge ruled yesterday that the state's Mental Hygiene Department cannot transfer 96 Bronx-born residents from the Willowbrook Developmental Center to a \$23.4-million center for the retarded in the Bronx.

In a 13-page decision released at noon yesterday, Federal Judge John R. Bartels came out strongly for direct placement of those 96 persons into community-based facilities in the Bronx.

Two attorneys who have been associated with the Willowbrook case since it entered federal court in 1972 said yesterday that Judge Bartels' decision would probably have national significance as a legal precedent. One attorney, Chris A. Hanson of the New York Civil Liberties Union, cited cases in Florida and Illinois where the precedent might be used.

In essence, the judge ruled that an institution should not be used as an intermediary step before community placement and he emphasized again that community, not institutional, living will allow retarded persons to develop their potential.

The case of the Bronx Developmental Center attracted national attention because of its modernistic architecture which has won three national architectural awards. Despite those awards, the facility has been called unfit for retarded persons — a charge hotly contested by state officials.

The Bartels decision does not block the opening of the center, but merely halts the placement of former and present Willowbrook residents there.

The 79-year-old Judge Bartels said: "Transfer to the Bronx Developmental Center will create a risk of the loss of present improvement and also of delay in community placement, where the only real improvement in the handicapped and retarded can be expected."

The decision by Bartels represents a clear-cut victory for the Willowbrook

Review Panel which had gone into court to block the state's attempt to make the transfer. State officials had contended that the transfer to the 394-bed Bronx facility would speed the placement process.

Judge Bartels, however, ruled that "such a transfer would delay placement in the community and thus frustrate the chief purpose" of the Willowbrook Consent Judgment.

The consent judgment is an agreement worked out in federal court in April 1975 which requires that conditions at Willowbrook be radically improved and that the center's population be reduced to 250 by 1981. It has 2,500 persons there now.

Further agreements were worked out in court this March, but the thrust of those stipulations, as well of the consent judgment, is on the effort to place retarded persons in the community.

Recognizing that thrust, Judge Bartels said: "The goals of normalization and development of the mentally retarded cannot be met until every effort is made to physically and socially integrate (the retarded) into the mainstream of the community."

Bartels added that the activities of the retarded "should be oriented to community activities and the services delivered to them should be in the same context as services delivered to others."

Although Judge Bartels' decision stops the state from making a mass transfer of Willowbrook residents, it does allow that parents of Willowbrook residents can ask that their children be transferred to the Bronx center, which is set to open in September. Observers said yesterday that that parental option is apparently just a reaffirmation of existing parental rights.

There are presently about 400 Willowbrook residents who were born in the Bronx. Most will eventually be placed in community facilities in the Bronx. As a transitional step, however, the state wanted to place 96 of those residents in the Bronx center.

Although conceding that if he had to build the Bronx center today, he would not do it, Deputy State Commissioner for Retardation Thomas A. Coughlin said in court he nevertheless felt that the transfer from Willowbrook to the Bronx would speed the placement process.

Coughlin told Judge Bartels in court testimony May 11 that the Bronx center would offer a much higher level of care than Willowbrook. "What we can do at the Bronx center and what we can do at Willowbrook are two different universes," Coughlin, a former Willowbrook director, said.

In court testimony May 12, however, Judge Bartels heard a different tune from Dr. James R. Clements, chairman of the Willowbrook Review Panel. Dr. Clements said that it was his experience in Georgia — where is a director of a center for the retarded — that using institutions as intermediary facilities make community placement "doubly difficult."

Dr. Clements called the modernistic Bronx center "the wrong concept at the wrong time in the wrong place."

After the two-day hearing, Bartels asked for more expert testimony and the Review Panel arranged for panel member Linda Glenn, assistant commissioner for retardation in Massachusetts, to testify. She echoed Dr. Clements, saying the Bronx center would delay development and cause a loss of skills.

Judge Bartels cited the Glenn and Clements testimony but also pointed to a group home in the Bronx where 12 former Willowbrook residents have made what the judge called "remarkable improvement."

The home's director, Sister Barbara Eirich, told the judge that the 12 persons all were quite nervous that the group home was only transitional. They wanted to stay there and were afraid that they would be moved again — just like they would be moved again if they had to go to the Bronx center.