

# ACLU, state near agreement on suit

By ANEMONA HARTOCOLLIS

Following last-ditch attempts at settlement, lawyers from the state and the New York Civil Liberties Union were scheduled to appear in Brooklyn Federal Court this morning, where they have filed competing motions on state care of the mentally retarded.

Parties from each side refused comment yesterday on the progress of secret negotiations toward an out-of-court settlement.

Regardless of whether a settlement is in sight, the Civil Liberties Union is expected to make opening arguments and to call its first witness in court today, according to attorneys for the state.

In its motion, Civil Liberties has accused the state of "gross negligence" in the treatment of more than 4,000 retarded patients from the Staten Island Developmental Center in Willowbrook.

A last-minute bargaining session took place yesterday in the offices of a Manhattan law firm, according to Paul R. Keitzman, a lawyer for the state Office of Mental Retardation and Developmental Disabilities.

"The fact that they were having a session today indicates some optimism on both sides," said James E. Introne, the former state commissioner of mental retardation, who is a defendant in the motion brought by Civil Liberties.

But it could not be determined whether the state and the group actually had reached an agreement during the session in the offices of the law firm Paul, Weiss, Rifkind, Wharton & Garrison.

"It's no surprise to me that I'm working the night before we go to court," said Chris Hansen, a Civil Liberties lawyer reached yesterday in the Paul, Weiss offices. But he declined to discuss even whether bargaining had taken place, let alone the terms of a potential settlement.

Paul, Weiss is working as a pro bono, or unpaid, consultant to the Legal Aid Society, which has joined Civil Liberties in its motion. On the opposing side, the state is represented, for a fee, by the private law firm of LeBoeuf, Lamb, Leiby & McRae.

Essentially, both motions, which were filed May 22, reopen the historic Willowbrook Consent Decree of 1975.

Reached in Brooklyn Federal Court, the decree set guidelines to reform squalid and overcrowded conditions in the Willowbrook State School, since renamed the Staten Island Developmental Center.

The Civil Liberties Union has charged the state with violating the rights of the retarded by failing to comply with the provisions of the decree in four areas: staffing, education, clothing and community living arrangements.

To insure improvement, the group is asking the court to appoint a special master with the power to monitor state treatment of the retarded and report back to the court on deficiencies.

In its countervailing motion, New York state is asking the court to relax key provisions of the consent decree that require patients to be moved from institutions into group homes located in a community setting.

While the decree restricts the size of group homes to a maximum of 10 beds, the state wants to place as many as 50 patients in community-based facilities.

Kietzman said state officials believe larger facilities are "clinically and practically" more appropriate for patients

needing complicated and costly support services.

Until 1979, state compliance with the consent decree was monitored by the Willowbrook Review Panel, a group of experts with powers resembling those of a special master. But for the past two years, the state Legislature has refused to appropriate \$363,000 annually to support panel activities.

Lawmakers in Albany, including Assemblywoman Elizabeth A. Connelly, accused panel members of forcing the state to waste money on clinically unwise decisions, such as high-rise apartments for the severely disabled.

The Civil Liberties Union, on the other hand, contends that state care of the retarded has steadily declined in quality since the review panel was denied funding.

Introne said yesterday that he doubts the Legislature would cooperate if called on to fund a special master. "I have no problem with anybody monitoring the state," he said, "except insofar as it impairs our relations with the Legislature. I think a master would produce some dissatisfaction."