

Tentative settlement on Willowbrook

By ANEMONA HARTOCOLLIS

The New York Civil Liberties Union and lawyers for New York State said yesterday that they had reached a tentative out-of-court settlement to modify the Willowbrook Consent Decree.

Under the 1975 court decree, the state agreed to phase out its squalid and overcrowded institution in Willowbrook by moving more than 4,000 mentally retarded patients into the community.

At a hearing in Brooklyn Federal Court yesterday, attorneys on both sides said their changes preserved the spirit of the decree, whose goals the state has failed to meet despite a 1981 deadline.

But Murray B. Schneps, the parent of a retarded child and a client of the Civil Liberties Union, told federal Judge John R. Bartels that the settlement

was unacceptable, denouncing it as "a sellout."

Sounding a startling note of discord, Schneps said he will appeal the settlement if Bartels accepts it on Oct. 13, when the hearing is scheduled to resume.

The hearing was adjourned yesterday to give the lawyers who negotiated the settlement time to present it to their clients for approval.

On one side, the document must be acceptable to Gov. Carey and officials in the state Office of Mental Retardation and Developmental Disabilities. On the other side, it must be approved by parents and advocates of the mentally retarded patients being represented in court by the Civil Liberties Union.

The settlement modifies the consent decree in two key areas.

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Developmental Center, Willowbrook, in 1975. Willowbrook now houses 860 of its original patients.

Under the settlement, the state has agreed to reduce the population of Willowbrook to 250 patients by April 30, 1984, an extension of the original 1981 deadline.

Both key stipulations of the settlement are likely to stir controversy. State legislators have opposed the concept of an outside monitor, while some parents of the retarded, including Schneps, object to larger

group homes.

Until recently, a group of non-According to Chris Hansen, a Civil Liberties attorney, it stipulates:

That the court will appoint a "special monitor" with the power to investigate and report back on deficiencies in state care of the mentally retarded.

That the state will be allowed to set up 24-bed group homes in the community, subject to the monitor's consent. The decree presently imposes a 10-bed maximum on such facilities.

Like the decree, the settlement governs state care of more than 4,000 retarded people who

lived at the Staten Island Developers responsible to the court existed in the form of the Willowbrook Review Panel. But in 1979 the Legislative refused to allocate any more money for panel activities, saying the state was complying in good faith with the consent decree.

In their settlement the lawyers have guarded against similar legislative meddling with the special monitor. The monitor's salary, and incidental expenses, will be assessed as part of the cost of litigation, which the state is forced to pay.

Sen. Frank Padavan, D-Queens, who chairs the state Senate Mental Hygiene Commit-

tee, said in an interview yesterday that he disapproved of the special monitor, although it was too early to predict how he might challenge the idea.

"I've told the commissioner (of mental retardation) if he can't do his job, then quit. That's when we need a monitor," he said.

Padavan added that he believes the state is "eons away" from the inhumane conditions at Willowbrook that led to the formulation of the original decree in federal court six years ago. "I've urged the state to take a course that would place the decree in a sunset mode, meaning

it would end," he said.

But Schneps, addressing the court yesterday, took an opposite view of state's commitment to the retarded. "Your Honor, Willowbrook is a horrendous, deteriorating disaster," he told Bartels in a special plea from a podium.

Schneps took issue with the provision for 24-bed group homes, which the settlement characterizes as transitional facilities, to be replaced eventually by smaller living arrangements.

"These transitional units will really harden into permanent placements for these people, they will remain for time immemorial," he said.

Schneps, a practicing lawyer, was instrumental in obtaining a court order forcing the state to set up 3- to 6-bed apartments for profoundly retarded and physically disabled patients from the Flower & Fifth Avenue Hospital in Manhattan.

That court order, which affected Willowbrook patients who had been transferred to Flower & Fifth Avenue, would be vacated by the settlement.

Schneps, who was a member of the review panel, said other panel members and parents had agreed to support him if he decided to seek dismissal of the lawyers currently representing Willowbrook patients.

He said he and Michael Lottman, another lawyer and review panel member, were considering taking over the litigation instead. In addition to the Civil Liberties Union, the Legal Aid Society and the Manhattan law firm of Paul, Weiss, Rikind, Wharton & Garrison are representing the retarded patients.

Hansen, the Civil Liberties lawyer, told Judge Bartels that, like Schneps, he considered Willowbrook "an abomination" even at the current time.

But Hansen insisted the proposed settlement was "in the best interests" of the mentally retarded patients.

Taylor R. Briggs, an attorney with

the law firm of LeBoeuf, Lamb, Leiby & MacRae who has been retained by the state, said in an interview yesterday that the settlement offered "a better instrument that is more likely to effect the goals of the consent judgment which are shared by everybody."