

Willowbrook case: Seeking greater good

By ANEMONA HARTOCOLLIS

Last month, lawyers reached an out-of-court settlement they contend will improve New York state's care of some 4,800 mentally retarded patients from Willowbrook.

But in the meantime, critics have questioned whether the settlement, which may be ratified

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by a federal judge tomorrow, represents real progress or legal gymnastics and empty promises.

"What we have accomplished is for the greater good. We're trying to avoid a divisive court confrontation which is like a divorce — nobody gains," says Samuel J. Kawola, deputy commissioner of program operations in the state Office of Mental Retardation and Developmental Disabilities.

But Murray B. Schneps, the parent of a 13-year-old retarded girl, has denounced the proposal as "unfortunately and unwittingly

tingly a horrible swipe" at the civil rights of present and former patients at the Staten Island Developmental Center, commonly called Willowbrook.

Which point of view prevails will depend on the outcome of a hearing set to begin in Brooklyn Federal Court tomorrow. Schneps, himself a lawyer, claims he has rallied other parents to his side and threatens to block the proposed settlement.

The terms of the settlement have created a bitter rift between old allies: parents of Willowbrook patients — like Schneps — and the public interest lawyers who have represented them since 1972.

It was lawyers from the New York Civil Liberties Union and the Legal Aid Society who sat at the bargaining table with state lawyers to negotiate the settlement, beginning six months ago.

The same lawyers created the Willowbrook Consent Decree in

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1975, a court document that forced the state to reform inhumane overcrowding and understaffing at Willowbrook. It gave the state six years, until last March, to move Willowbrook patients to group homes in the community, where they could lead productive, normal lives.

Less than half, or about 2,300, of the institution's population has been placed in the community, according to state statistics. "With all the resources and all the best faith and all the efforts, we've slipped on the timetable," Kawola said.

The settlement grants the state a second chance by amending the decree. In its most sweeping and controversial change, it allows the state under certain conditions to enlarge the size of group homes from 10 beds, the current maximum, to 24 beds.

Both sides agree the difference between 10 and 24 beds is hardly academic. The state concedes that a 24-bed facility lacks the crucial intimacy of a smaller environment.

Thus, according to the language of the settlement, the bigger residences are intended as "transitional" facilities, to be replaced by 10 or less beds within three years.

But in a recent interview, Schneps said he reads the proposal as a contract full of loopholes, letting the state erode its policy of integrating the retarded into the community. In time, he argued, the 24-bed facilities would gain legitimacy and harden into permanent institutional enclaves.

The public interest lawyers, Schneps insisted, "underestimate the wiliness of New York state."

Chris Hansen, a lawyer for the New York Civil Liberties Union, has his own interpretation of the settlement, one which has upset both Schneps and state officials.

Hansen, chief lawyer for the Willowbrook patients, argues the settlement is partly a formality that, while offering the appearance of compromise, remains as strong as the original Willowbrook Consent Decree.

"There's a lot of talk in this document about 10- and 24-bed facilities," Hansen said in an interview. "In my opinion, it's just that. It's just talk. This was a facesaving document for the state."

Hansen said he would go to court to challenge any attempt by the state to make the bigger residences a reality. He noted that the settlement requires the state to prove the 24-bed facilities would speed the transition to 10-bed group homes.

"That rationale for transitional facilities is poppycock," he said. "We've won that issue in the past, and we'll win it in the future."

Kawola said he was "troubled" by Hansen's approach, because "it indicates he may not be bargaining in good faith. It makes my job more difficult." But he said he was confident the state could vindicate transitional placement in court.

If Federal Judge John R. Bartels accepts the settlement, Kawola said, the state is prepared to move 50 to 100 patients "very quickly," beginning next month. Already the state has found 11 sites with more than 10 beds in Brooklyn, Queens and Manhattan, including empty convents and buildings owned by private child welfare agencies.

"I understand that Chris Hansen is philosophically opposed to

larger facilities, but I think this is one of those cases where the perfect is the enemy of the good," adds Taylor Briggs, an attorney with the Park Ave. law firm of LeBoeuf, Lamb, Leiby and McRae, retained by the state to help negotiate the settlement.

Schneps' prediction that so-called transitional facilities eventually would evolve into permanent residences is "180 degrees from the truth," according to Briggs.

If the state violates its promises, the settlement allows the federal court to impose fines starting at \$1,000 a day. To audit state care of the retarded, the settlement establishes a special monitor, an individual who would be appointed in court with expenses paid by the state as a cost of litigation.

Schneps, however, scoffs at the notion of financial penalties.

"The Legislature has gotten smart about Willowbrook," he said, warning that Albany lawmakers were likely to reduce their appropriations for the retarded by the amount of any fine levied against the state.

The Staten Island Developmental Center now houses about 860 patients. Nearly half of the surviving "Willowbrook class" of 4,800 patients has been transferred to other state institutions.

By April 30, 1984, the settlement requires the state to reduce the census of the Staten Island Developmental Center to 250 patients native to the borough. By 1986, it requires the state to shut down the institution entirely. Under the original decree, Willowbrook would have remained as a 250-bed institution indefinitely.