

Willowbrook case may go to top court

By JULIE MACK

Lawyers for the plaintiffs of the Willowbrook Consent Decree have decided to ask the U.S. Supreme Court to enforce the 1975 agreement by New York State to reform the Staten Island Developmental Center.

A petition requesting the court to hear the case will be filed by mid-August, said Chris Hansen of the New York Civil Liberties Union and a lawyer for the plaintiffs.

The lawyers have been discussing whether to petition the Supreme Court since April, when a federal appeals court indicated that the state might be allowed to alter the original consent decree.

That decree was signed by Gov. Hugh Carey to settle class action lawsuits charging the state with improper care of patients at Staten Island Developmental Center, then called Willowbrook State School. The agreement defined proper environment, clothing, education, staff, nutrition and housing at the center.

The plaintiffs — represented by the New York Civil Liberties Union, the Legal Aid Society and parent advocate groups — went back to court in 1982 in front of U.S. District Court Judge John R. Bartels to accuse state officials of violating the 1975 decree.

Particularly glaring was violation of an agreement to reduce SIDC's population to 250 patients by April 1981. There were more than 1,300 patients on the Willowbrook campus at the time the 1982 lawsuit was heard, and more 1,000 patients are still at the institution today.

The state argued that moving patients out of the institution and into the community was particularly difficult because of New York City's tight real estate market, neighborhood opposition for homes for the mentally retarded, and the need to qualify for federal Medicaid funds. Medicaid will not fund smaller apartments.

In addition, the state asked Judge Bartels to alter the original agreement, which mandated that group homes for the retarded should be no bigger than 15 beds, to allow the establishment of group homes of up to 50 beds.

Bartels denied the state request, ordered the appointment of a special master to monitor future progress at SIDC and told the state to fulfill the obligations it made in 1975 "with all deliberate speed."

The state appealed that ruling, and a three-judge panel in the 2nd Circuit Court of Appeals ordered Bartels to reconsider the testimony of state witnesses in allowing larger group homes.

Bartels has not yet delivered a new ruling, and Hansen said the decision to petition U.S. Supreme Court may put the lower court on hold, at least until the Supreme Court decides whether to hear the case.

The court will be asked to rule on the validity of the original agreement, said Hansen.

"The question here is whether court orders have any value," said the attorney. "The Court of Appeals says it should be very easy to modify a court order. It seems odd to us, since this is a contract and it shouldn't be easy for one side to change the rules.

"The legal issue being represented here is not something that affects only the mentally retarded. It is a question that can arise on any kind of case that involves a court order. It's not an issue that falls easily along liberal/conservative lines."

Hansen would not venture a guess on whether the court would agree to hear the case. "You never know," he said. "If we didn't think it was an important issue, we wouldn't be asking."