832 F.2d 245 (1987)

SOCIETY FOR GOOD WILL TO RETARDED CHILDREN, INC., Russell Cohen, by his natural father Milton Cohen, Audrey Rothstein by her natural mother Paula Rothstein, Donald William Fearing by his natural father George Fearing, Susan Feibusch by her natural father Philip Feibusch, Lisa Gorelick by her natural mother Leila Gorelick, Lynn N. Schenk by her natural mother Mildred Schenk, Henry F. Segal by his natural father David H. Segal, Susan L. Meehin by her natural father Milton Meehin, Robert Cunningham by his natural father Charles Cunningham, Nicholas Colacioppo by his natural mother Beatrice Colacioppo, Thomas H. Czerniewicz by his natural father John Czerniewicz, Christoher M. Verdino by his natural father Rudolph Verdino and Barbara Karp, on behalf of themselves and all those similarly situated, Plaintiffs-Appellants,

v.

Mario M. CUOMO, as governor of the State of New York, Thomas A. Coughlin, III, Individually and as Commissioner of the Office of Mental Retardation and Developmental Disabilities, Jennifer L. Howse, Individually and as Associate Commissioner of the Office of Mental Retardation and Developmental Disabilities and Alan R. Sutherland, Individually and as Acting Director of the Suffolk County Developmental Center, Defendants-Appellees.

No. 134, Docket 87-7037.

United States Court of Appeals, Second Circuit.

Argued October 5, 1987.
Decided November 2, 1987.

Michael S. Lottman, Riverhead, N.Y. (Scheinberg, Schneps, DePetris & DePetris, Murray B. Schneps, of counsel), for plaintiffs-appellants.

Caren S. Brutten, New York City Asst. Atty. Gen. of the State of New York (Robert Abrams, Atty. Gen. of the State of New York, Lawrence S. Kahn, Deputy Sol. Gen., New York City, of counsel), for defendants-appellees.

Before PRATT and ALTIMARI, Circuit Judges, and FRANK A. KAUFMAN, District Judge, United States District Court for the District of Maryland, sitting by designation.

246 *246 PER CURIAM:

In *Society for Good Will to Retarded Children, Inc., v. Cuomo,* 737 F.2d 1239 (2d Cir.1984), this court vacated the district court's order of August 10, 1983, 572 F.Supp. 1300 (Weinstein, *Chief Judge*), and held that, while most of that 1983 order might be supported by federal law, parts of it could not. Because, after the district court's order, the United States Supreme Court had decided in *Pennhurst State School & Hospital v. Halderman,* 465 U.S. 89, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984), that the eleventh amendment bars a federal court from granting state law relief in actions against state officials, we remanded for reconsideration so the district court could determine which portions of its 1983 order were supported by federal law.

On remand, when defendants informed the court that they would voluntarily implement the entire plan required by the 1983 order, Judge Weinstein noted that "[i]n light of the defendants' representation that they are now implementing and will continue to implement the plan, the issues presented on remand are moot." 103 F.R.D. 168, 169 (E.D.N.Y.1984). Contemplating that the state would comply with the requirements of the plan, but responding to the plaintiffs' request for some means to enforce compliance with the plan, the district court stated, "[i]f the defendants substantially depart from the implementation of the plan and conditions at the facility violate federal law, plaintiffs may move to reinstate the case." *Id.*

Alleging continued violations of federal law as well as departures from the plan, plaintiffs, on September 26, 1986, moved to reinstate the case. Judge Weinstein denied the motion on the erroneous assumption that "the case [was] already in effect long closed", and he granted plaintiffs sixty days in which to serve a complaint in a "new action", which he deemed to have been commenced by the filing of plaintiffs' motion. This was in error and an abuse of discretion. In light of the state's voluntary undertaking to carry out the entire plan embodied in the 1983 order, whether required by state law or by federal law, or by neither, it was not improper for Judge Weinstein and the parties to defer consideration of the issues on remand since full compliance with the plan as offered by the defendants would have rendered unnecessary the separation of federal from state law that we had required in our order of remand. Now that the defendants' compliance with the plan has been challenged, however, the issues on remand are no longer moot and the district court must comply with our remand order with a view toward enforcing those portions of its 1983 order that under *Pennhurst* may be granted by a federal court.

It may be that the entire 1983 order can now be enforced against the state, including the portions based on state law. In this connection the district court should consider, with due regard to *Atascadero State Hospital v. Scanlon,* 473 U.S. 234, 105 S.Ct. 3142, 87 L.Ed.2d 171 (1985), whether the state has waived its eleventh amendment immunity in this case. The state may have done so (1) when the defendants represented to the district court that they would voluntarily implement the 1983 plan in full, or (2) when the assistant attorney general conceded at oral argument before this court that in the reinstated case, or even in a new case, the state would be bound to carry out that plan.

We therefore reverse and remand with a direction to the district court (1) to reinstate the case, (2) to determine whether and to what extent the state has waived its eleventh amendment immunity in this case, and (3) to conduct such further proceedings as shall be appropriate, including, if necessary, a separation of the state and federal claims, in order to secure for the plaintiff class the relief to which it is now entitled.