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LAVERY, C. J., concurring. I concur in the result reached by the majority, but I write separately because I believe that under the circumstances of this case, the department of children and families breached the duty that it owed to the respondent.

The respondent has multiple disabilities. He frequently displays aggressive behavior, and his large size makes him difficult to manage. It is clear that the state of Connecticut could not formulate a plan to handle the respondent adequately. In that regard, the record reflects that on March 17, 2000, an interagency committee met to review the respondent's case and to develop a coordinated plan to serve him. Twenty-six professionals were present at that meeting, representing the department of correction, the department of mental health and addiction services, the department of mental retardation, and the department of children and families. Robert W. Plant, superintendent for Riverview Hospital, and Patrick Russolillo, supervising psychologist for the Long Lane School, also were present at that meeting. Plant and Russolillo jointly authored a letter to the court, dated March 17, 2000, which indicated that the respondent should be treated in a specially designed and secure treatment setting; however, because no such setting was available, Plant and Russolillo recommended transfer to Hartford Detention or to John R. Manson Youth Institution.¹ Because the department of children and families could not facilitate an adequate mental health placement for the respondent, he was transferred to John R. Manson Youth Institution, where he was incarcerated in solitary confinement.

General Statutes § 17a-12 (a) allows for the transfer of “a person fourteen years of age or older” who is “dangerous to himself or others or cannot be safely held at Long Lane School” The statute does not take into account an individual with the respondent's disabilities. I believe, however, that transferring the respondent to a penal institution, and incarcerating him in solitary confinement when he is not a criminal, is not within the contemplation of the statute. Individuals such as the respondent require appropriate mental health services, not incarceration in a prison cell. Unless the respondent is placed in an appropriate therapeutic setting, he will not learn how to modify his behavior.

It is not the respondent's fault that the state was

unable to provide adequate mental health or mental retardation services. The respondent filed the present appeal on June 6, 2000. On November 6, 2000, he was transferred from his placement in solitary confinement at John R. Manson Youth Institution to the Arbor-Fuller Hospital in Massachusetts. Less than one week later, on November 11, 2000, he was transferred back to the Long Lane School and remained there until his current placement as set forth in footnote 6 of the majority opinion. That placement could have been made much earlier so that the respondent did not have to suffer a Dickens “Bleak House” experience.

Children with mental illness who are committed to the department of children and families must be offered adequate treatment programs corresponding to their individual needs. The respondent has a profound need for such services. Instead of providing appropriate services, the respondent was incarcerated in a prison cell. In taking that action, the department of children and families breached the duty that it owed to the respondent.

I am writing this concurrence so that no mentally handicapped child will ever have to suffer the debilitating treatment suffered by the respondent. If the department of children and families does not have a facility to handle a disabled child in its custody, it has a duty to find a facility equipped to handle the disability and place the child in a proper setting.

¹ The letter stated in relevant part: “Based on a review of his history and current functioning the team has determined that [the respondent] can only be effectively treated in an environment equipped to safely contain his rage and aggression. At present, there is no known facility of this kind outside of a correctional facility. In the long term, the team is in agreement that [the respondent] will best be served outside of the correctional system in a specially designed and secure treatment setting that we are working together (DMHAS, DCF, DMR & DOC) to develop. In the short-term we feel that he is best served in a highly secure setting such as Hartford Detention or Manson Youth. DCF is committed to arranging for Mental Health Services and Restoration of Competency to be provided in whatever setting can safely maintain him. Our experience has been that he cannot be safely maintained at either Long Lane or Riverview Hospital.”
