

[Knox Cty. v. M.Q.](#)

United States District Court for the Eastern District of Tennessee, Knoxville Division

April 27, 2021, Filed

3:20-CV-00173-DCLC-HBG

Reporter

535 F. Supp. 3d 750 *; 2021 U.S. Dist. LEXIS 90377 **

KNOX COUNTY, TENNESSEE, Plaintiff, vs. M.Q., et al.,
Defendants.

Core Terms

classroom, general education, progress, kindergarten, team, placement, mainstreaming, blended, teacher, peers, preschool, benefits, school year, disabilities, regular, non-disabled, disabled child, special education, interact, delays, skills, curriculum, segregated, outweigh, autism, preponderance of evidence, self-contained, participated, communicate, indicates

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Judges: Clifton L. Corker, United States District Judge.

Opinion by: Clifton L. Corker

Opinion

[*753] MEMORANDUM OPINION AND ORDER

Knox County, Tennessee ("Knox County") initiated this action on April 27, 2020 seeking judicial review of the Final Order of Administrative Law Judge ("ALJ") Phillip R. Hilliard pursuant to the [Individuals with Disabilities Education Act \("IDEA"\)](#), [20 U.S.C. § 1415\(i\)\(2\)\(A\)](#) [Doc. 1]. **[**2]** M.Q., the student, and J.Q., and N.Q., his parents (collectively, "M.Q."), the prevailing parties below, filed an Answer and Counterclaim seeking attorneys' fees and expenses pursuant to the IDEA, [20 U.S.C. § 1415\(i\)\(3\)\(B\)](#), the [Rehabilitation Act](#), [29 U.S.C. § 794a](#), and the [Americans with Disabilities Act \("ADA"\)](#), [42 U.S.C. § 12205](#) [Doc. 8].¹ Currently before the Court is Knox County's Motion for Judgment on the Pleadings [Doc. 20]. M.Q. responded in opposition and filed a Counter Motion for Judgment [Doc. 21]. Knox County replied [Doc. 24] and M.Q. filed a Surreply with leave of Court [Doc. 28]. This matter is now ripe for resolution. For the reasons stated herein, Knox County's Motion for Judgment on the Pleadings [Doc. 20] is **DENIED** and M.Q.'s Counter Motion for Judgment [Doc. 21] is **GRANTED**.

I. APPLICABLE LAW

States receiving federal funding under the IDEA must have policies and procedures in place to meet certain statutory conditions. [20 U.S.C. § 1412\(a\)](#). The IDEA's "principal command" is that states provide all disabled children a "free and appropriate public education" ("FAPE"). [Fry v. Napoleon Cmty. Sch.](#), [137 S. Ct. 743, 753, 197 L. Ed. 2d 46 \(2017\)](#); §

¹ Prior to the filing of Knox County's Complaint Petition for Judicial Review, M.Q. also initiated an action against Knox County seeking attorneys' fees and expenses on March 25, 2020. See *Michael Q., et al. v. Knox County*, 3:20-CV-125. Upon request of the parties, the Court consolidated the two cases and designated this case, *Knox County v. M.Q., et al.*, No. 3:20-CV-173, as the lead case.

[1412\(a\)\(1\)\(A\)](#). The IDEA also requires states to develop an "individualized education program" ("IEP") for children with disabilities. [§ 1412\(a\)\(4\)](#). A child's IEP "must state the student's educational [**3] status, the annual goals for the student's education, the special-educational services and aides to be provided to meet those goals, and the extent the student will be 'mainstreamed,' i.e., spend time in school environments with non-disabled students." [L.H. v. Hamilton Cty. Dep't of Educ., 900 F.3d 779, 788 \(6th Cir. 2018\)](#) (citing [§ 1414\(d\)\(1\)\(A\)](#)). To promote mainstreaming, the IDEA requires that disabled children be placed in the "[l]east restrictive environment" ("LRE"), which means:

[t]o the maximum extent appropriate, children with disabilities...are educated [**754] with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

[§ 1412\(a\)\(5\)\(A\)](#).

The IDEA provides a series of "procedural safeguards" for parents to follow to challenge a particular program established for their disabled child. [§ 1415](#). "[A]grieved parents can begin a formal grievance process by submitting a 'complaint' to the school 'with respect to any matter relating to the identification, evaluation, or educational placement of the child, [**4] or the provision of a [FAPE] to such child.'" [L.H., 900 F.3d at 789](#) (quoting [§ 1415\(b\)\(6\)](#)). The parents, school officials, and IEP team may engage in a formal meeting and, if that meeting is unsuccessful, the parties may enter mediation. *Id.* (citing [§ 1415\(e\)](#)). "If the parties choose not to mediate, the aggrieved parents may file a 'due process complaint' and...[a] state [ALJ], acting under the school district's authority, conducts [a due process] hearing and renders a decision." *Id.* (internal citations omitted). Once the ALJ renders a decision, the aggrieved party may seek judicial review by filing a civil action in state or federal court. [§ 1415\(i\)\(2\)\(A\)](#). The court conducting such review "(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate." [§ 1415\(i\)\(2\)\(C\)](#).

II. BACKGROUND

The Court has thoroughly reviewed the record of the administrative proceedings [Doc. 18] and the parties' respective briefs. The parties have not presented additional evidence for the Court's consideration.² Based on an independent review of the record as a whole, the Court makes the [**5] following factual findings.

A. General Information about M.Q.

M.Q. is a seven-year-old boy with autism. M.Q. was five years old at the time of the IEP meeting at issue and six years old at the time of the administrative hearing. Dr. Charles Ihrig, a Clinical Psychologist, diagnosed M.Q. with autism spectrum disorder level three, the most severe form of autism. Individuals in level three are more likely to have cognitive delays and severe communication and other functioning delays. M.Q. is delayed in three areas: (1) communication, (2) pre-vocational, and (3) social skills. These delays impact his ability to make his wants and needs known, receive and follow directions, fully attend and participate in classroom activities, and interact and relate to his peers.

At the time of the administrative hearing below, M.Q.'s receptive communication (the ability to listen, pay attention, and demonstrate an understanding of what someone is telling him) was equivalent to a one-year-seven-month old child and his expressive communication (the ability to communicate back) was equivalent to a one-year-three-month old child. M.Q. is largely nonverbal and uses communication such as physical guidance, where [**6] he guides [**755] another individual to what he wants, or three point visual, which involves looking at an individual, looking at an object he wants, and then looking back to the individual. M.Q. also has an augmentative assistive communication ("AAC") device, which is an iPad containing specific programming with picture icons that M.Q. can use to express his wants and needs. M.Q. received the AAC device in December 2018 and can use it with assistance and has, on occasion, communicated with it independently. M.Q.'s nonverbal status impedes the ability to measure his current cognitive capabilities because he can not communicate what he does and does not know. However, he appears to comprehend most of what is communicated to him and does not appear to be cognitively

² Although Knox County's Complaint [Doc. 1] includes a request that the Court receive additional evidence, the parties indicated at the July 15, 2020 scheduling conference that they would not present additional evidence and the parties' [Rule 26\(f\)](#) report [Doc. 13] also does not include any indication that the parties planned to present additional evidence.

impaired. Despite his delays, M.Q. can communicate to those around him in a way they can understand. M.Q.'s age and present efforts at communication show his capacity to improve.

With respect to M.Q.'s pre-vocational skills, it is harder for him to attend and participate in large group than small group activities. M.Q. also showed more participation in small groups during self-chosen or preferred activities, such as anything dealing [**7] with letters or the alphabet. During large group activities and teacher-directed activities, M.Q. required more adult support to participate. Adult supports consist of visuals, hand-over-hand prompting, verbal cues, and calming strategies. M.Q. also needed additional supports to help him remain seated during large group activities, such as a cube chair, which is a small chair that has sides to it that clearly defines his personal space, and fidgets or something to hold in his hands. M.Q. also often needed similar supports (hand-over-hand prompting, verbal cues, and visual prompts) to complete tasks such as washing his hands and using the bathroom. Despite this, M.Q. can meet many of his basic self-care needs in a manner consistent with his age, except for potty training.

M.Q. is also delayed in his ability to socialize and interact with his peers, but he progressed in this area in preschool. M.Q. began preschool with mostly solitary play and did not tolerate peers coming into his space well. Throughout the year, M.Q. began interacting with other students and built up to mostly parallel play, which is playing in the same area as another student but not playing together. J.Q., M.Q.'s [**8] mother, noted that he often interacts and engages with children in the neighborhood and that he has participated in Vacation Bible School, attended birthday parties, and played on a soccer team. M.Q. has the capacity to model other students' behaviors, and research shows that interaction with non-disabled peers is helpful in improving an autistic child's social skills.

M.Q. does not have any significant behavioral issues. In fact, he is compliant and cooperative and does not have tactile defensiveness or issues with supports. Additionally, M.Q. is not aggressive and responds well to redirection. M.Q. did not have a functional behavior assessment in preschool, which is a specific document to help support students and staff with a student who has behavioral issues. M.Q. also did not need a behavior intervention plan because his teachers were able to manage his behaviors.

B. M.Q.'s IEP Progress in Preschool from 2017 to 2019

M.Q. started out in a self-contained preschool classroom during the 2017-2018 school year at Cedar Bluff Preschool. Only students who require special education services are permitted in the self-contained classroom. At the end of the 2017-2018 school year, the IEP team [**9] identified four goals in the three areas of need for [**756] M.Q.—pre-vocational, social and emotional, and communication. The IEP team also agreed that M.Q. would benefit from being transferred to a fully inclusive classroom at the beginning of the 2018-2019 school year because he would be able to learn from peer models. Additionally, the IEP team concluded that a third day of school per week was necessary for M.Q. to make progress toward his IEP goals and decided to consider at the next IEP meeting whether a fourth day would be necessary.

In August 2018, M.Q. began attending the fully inclusive classroom at Cedar Bluff Preschool, referred to as a blended classroom, three days per week for 5.25 hours per day. The blended classroom, taught by Elizabeth Taylor with the aid of at least two teaching assistants, contained 13 to 15 students, half of whom were non-disabled children or peer models. The blended classroom is classified as a general education classroom, and the curriculum is based on general education. The classroom also includes visual supports, sensory materials, and step-by-step pictures that help children move through tasks. These supports can be individualized to the student if [**10] needed. Additionally, service providers such as occupational therapists and speech language pathologists would provide M.Q. services in the classroom. At the October 2018 IEP meeting, the IEP team revised M.Q.'s goals in the same three areas of need, based on his progress. The IEP team also concluded that M.Q. should remain in the blended classroom for three days per week and planned to reconvene before the end of the 2018-2019 school year to plan for M.Q.'s transition to kindergarten.

While in the blended classroom, M.Q. made documented progress toward his IEP goals in each area of need. Knox County quantifies a child's progress toward their IEP goals through the completion of eight progress reports per school year, and a ninth report if the child participates in the summer extended school year program ("ESY"). It updates the progress reports every four and a half to five weeks. The scores on the progress reports range from four to six. A score of four indicates that the goal objective has been met, a score of five indicates the teacher anticipates the child will meet the goal by the end of the IEP year, and a score of six indicates the teacher does not anticipate the child will meet [**11] the goal by the end of the IEP year. M.Q. received a score of five for each goal on all eight progress reports for the 2018-2019 school year.

C. Knox County's Proposed IEP for the 2019-2020 School Year

On May 15, 2019, the IEP team met to discuss M.Q.'s IEP for the kindergarten 2019-2020 school year.³ Everyone agreed on M.Q.'s present levels of performance and his goals for kindergarten, which did not change from the October 2018 IEP.⁴ Due to M.Q.'s progress during preschool, the IEP team determined that he did not need to be placed in the ESY summer program. However, Knox County proposed placing M.Q. in a comprehensive development classroom ("CDC-A") for 4.75 hours per day for the kindergarten school year. The CDC-A program consists exclusively of children with disabilities of different ages and grade levels with a smaller adult-to-child ratio. The CDC-A program contains three to four staff members and less [*757] than nine students who are taught the same curriculum as the general education classrooms, but the breakdown is different. The CDC-A program is more activities-based with a more hands-on and manipulative approach to academics, while the general education classroom is more teacher-directed. [*12]⁵ Knox County proposed that M.Q. spend the remainder of time, 2.25 hours per day, participating in the general education setting with the support of a paraprofessional. Specifically, Knox County proposed placing M.Q. in the general education setting only during C.A.R.E. (a kindergarten phonics program), arrival, departure, encore (music, art, physical education, and library), lunch, and recess.

Nicki Nye, the former supervisor for Knox County's CDC-A program, explained the continuum of special education services offered at Knox County as follows from least restrictive to most restrictive: (1) kindergarten; (2) kindergarten with a little special education support outside the classroom; (3) kindergarten with a little more special education support outside the classroom; and (4) the CDC-A self-contained classroom with various supports for disabled children. Ms. Taylor and Amanda Dye, Knox County's

³The regular education teacher present at the meeting was Carolyn Brown, a preschool teacher at Cedar Bluff Preschool.

⁴IEP goals usually cover a one-year period. Therefore, M.Q.'s goals from the October 2018 IEP would remain the same until the October 2019 IEP meeting.

⁵At the IEP meeting, Knox County proposed that M.Q. be placed in an out-of-zone school, Karns Elementary because his zoned school, Cedar Bluff Elementary, did not have a CDC-A program in place. However, Cedar Bluff Elementary has since then opened a CDC-A classroom.

program facilitator, testified that the various supports in place in the blended classroom could be provided in the general education kindergarten classroom. Knox County has an autism support team that can assist and train paraprofessionals or other support staff to help children in need. Paraprofessionals [*13] are available to pre-teach (introduce a child to the curriculum before it is taught), re-teach (review curriculum after it is taught) or administer lessons designed by the teachers. The proposed May 15, 2019 IEP indicates that the IEP team considered placing M.Q. in the general education classroom with these special education supports. However, testimony from those present at the IEP meeting suggests that the IEP team did not discuss full-time placement in the general education setting with supports and services.

D. Due Process Hearing and Proceedings before the ALJ

On May 22, 2019, M.Q.'s parents filed a due process complaint alleging that Knox County's proposed placement in the CDC-A classroom violated M.Q.'s right to be educated in his LRE. The complaint further alleged that there was no data to show that M.Q. could not continue to progress toward his goals in a general education kindergarten classroom with supports and services. Thus, M.Q.'s parents took the position that M.Q.'s LRE is the general education classroom with supplementary aids and services, such as a teaching assistant and push-in supports. The ALJ held a three-day administrative hearing and, on February 24, 2020, issued [*14] a Final Order finding that Knox County's proposed placement was not M.Q.'s LRE and, therefore, violated the IDEA.⁶ This appeal followed.

III. STANDARD OF REVIEW

As stated above, a court conducting judicial review of an ALJ's decision under the IDEA receives the records of the administrative proceedings, hears additional [*758] evidence at the request of a party, and grants appropriate relief based on the preponderance of the evidence. [§ 1415\(i\)\(2\)\(C\)](#). The standard of review is "'modified de novo'...meaning that [the district court] must make an independent decision based on the preponderance of the evidence while also giving 'due weight' to the determinations made by the State ALJ." [L.H., 900 F.3d at 790](#) (quoting [Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206, 102 S. Ct. 3034, 73 L. Ed. 2d 690 \(1982\)](#) (internal citation omitted)). This

⁶The ALJ also held that M.Q.'s claims under the ADA and [Section 504 of the Rehabilitation Act](#) were pretermitted.

standard of review ensures that district courts do not "simply adopt the state administrative findings without an independent re-examination of the evidence," *Doe v. Metro. Nashville Pub. Sch.*, 133 F.3d 384, 387 (6th Cir. 1998), and prevents courts from "substitut[ing] their own notions of sound educational policy for those of the school authorities which they review." *Rowley*, 458 U.S. at 206. Consistent with this policy, more weight is due to the ALJ's determinations when the findings are based on educational expertise. *L.H.*, 900 F.3d at 790 (citing *McLaughlin v. Holt Public Schools Bd. of Educ.*, 320 F.3d 663, 669 (6th Cir. 2003)). "Establishing the LRE...concerns whether, [*15] or the extent to which, a disabled student can be mainstreamed rather than segregated and does not require any such educational expertise." *Id.* at 789 (citing *Roncker v. Walter*, 700 F.2d 1058, 1062 (6th Cir. 1983)). Finally, the party challenging an IEP carries the burden of proving by a preponderance of the evidence that the IEP was inadequate. *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 854 (6th Cir. 2004).

IV. ANALYSIS

Judicial review under the IDEA requires a two-part inquiry. *Deal*, 392 F.3d at 853. First, the Court must determine whether the school complied with the procedural requirements of the IDEA. *Id.* "This is an inquiry into the process by which the IEP is produced, rather than...into mere technical violations, which do not provide a basis for invalidating an IEP." *L.H.*, 900 F.3d at 790 (internal citations omitted). The second inquiry is whether the IEP satisfies the substantive requirements of the IDEA. *Id.* The IDEA contains at least two substantive requirements. The first deals with the IEP's substantive educational plan. To satisfy this requirement, the IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). The second is the LRE requirement, which requires that disabled children "be educated alongside [non-disabled] children to the maximum extent appropriate." *Roncker*, 700 F.2d at 1062.

With respect [*16] to the first inquiry, M.Q. contends that the procedural requirements were not met because a general education teacher of M.Q. did not attend the IEP meeting. The IDEA requires that the IEP team of a child with a disability include "not less than [one] regular education teacher of such child (if the child is, or may be, participating in the regular education environment)." § 1414(d)(1)(B)(ii). Carolyn Brown, a general education preschool teacher, participated in M.Q.'s May 15, 2019 IEP meeting. However, M.Q. asserts that a

general education *kindergarten* teacher should have been present because the IEP team prepared M.Q.'s kindergarten IEP. See 64 Fed. Reg. 12,477 (March 12, 1999) ("The regular education teacher who serves as a member of a child's IEP team should be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions [*759] about how best to teach the child."). Although the presence of a kindergarten teacher may have been preferable under the regulations, a procedural violation only constitutes denial of FAPE when it results in substantive harm. *Deal*, 392 F.3d at 854. There is no evidence in the record to suggest that Ms. Brown's presence resulted in substantive harm. Therefore, the absence [*17] of a general education kindergarten teacher does not entitle M.Q. to relief under the IDEA. Nonetheless, Knox County's failure to satisfy the procedural requirements reduces the deference afforded to its placement decision. See *Dong v. Bd. of Educ. of Rochester Cmty. Sch.*, 197 F.3d 793, 800 (6th Cir. 1999).

As for the second inquiry, M.Q. contends that Knox County's placement of M.Q. in the CDC-A program for most of the day violated the IDEA's LRE requirement. The LRE requirement "is a *non-academic* restriction or control on the IEP—separate and different from the measure of substantive education benefits—that facilitates the IDEA's strong 'preference for 'mainstreaming' handicapped children[.]'" *L.H.*, 900 F.3d at 789 (quoting *Rowley*, 458 U.S. at 181 n.4) (emphasis in original). Thus, "[i]n some cases, a placement which may be considered better for academic reasons may not be appropriate because of the failure to provide mainstreaming." *Roncker*, 700 F.2d at 1063.

As stated previously, the IDEA requires that "[t]o the maximum extent appropriate," disabled children "are educated with children who are not disabled" and a disabled child should not be placed in special classes or removed from the general education classroom unless "the nature or severity of the disability...is such that education in regular classes with the use of supplementary [*18] aids and services cannot be achieved satisfactorily." § 1412(a)(5)(A). The Sixth Circuit has developed a three-part categorical test to determine whether placement outside of the general education setting qualifies as a child's LRE. "[A] school may separate a disabled student from the regular class...when: (1) the student would not benefit from regular education; (2) any regular-class benefits would be far outweighed by the benefits of special education; or (3) the student would be a disruptive force in the regular class." *L.H.*, 900 F.3d at 789 (citing *Roncker*, 700 F.2d at 1063).

It is apparent that M.Q. does not fall within the first or third category. On the first category, M.Q. would benefit from

regular education. M.Q. is delayed in three areas—communication, prev-ocational, and social skills. Based on the expert testimony, young children with autism need as much social exposure to non-disabled peers as possible to develop communication and socialization skills. Additionally, M.Q. benefits from a routine, as changes to routine cause him discomfort and overstimulate him. Remaining in the general education environment, rather than transitioning back and forth between the general education classroom and the CDC-A program, would allow M.Q. to **[**19]** follow a regular routine while also modeling his non-disabled peers. On the third, those who interacted with M.Q. testified that he would not be a disruptive force in the general education classroom. M.Q. does not exhibit behavioral issues. He is compliant, cooperative, and responds well to redirection. More importantly, M.Q. does not have issues with supports.

M.Q.'s progress while in the blended preschool classroom also indicates that he would benefit from placement in the general education environment. The IEP team initially moved M.Q. from the self-contained preschool classroom to the blended classroom because he would benefit from **[*760]** learning from peer models. At that time, the IEP team concluded that a third day of school per week was necessary for M.Q. to make progress toward his IEP goals and decided to consider at the next IEP meeting whether a fourth day would be necessary. Notably, the IEP team never added a fourth day of school. While in the blended classroom, M.Q. made documented progress toward his IEP goals. Due to this progress, the IEP team determined that he did not need to be placed in the ESY summer program prior to his kindergarten school year.

Knox County does not **[**20]** dispute that M.Q. needs to spend time with his non-disabled peers to make both social and academic progress. However, Knox County takes the position that the proposed placement accounts for that need because it allows M.Q. to participate in the general education setting during the most social times of the day while also receiving the necessary level of support he needs in the CDC-A program to make appropriate progress on his IEP goals. Knox County asserts that the benefits of full-time placement in the general education classroom do not outweigh the benefits of the time in the CDC-A program, which leads to the second category articulated in *Roncker*.

When a segregated setting is considered superior, the Court must first determine whether the services which make that setting superior could be feasibly provided in a non-segregated setting. *Roncker*, 700 F.2d at 1063. If they can, placement in the segregated setting is "inappropriate under the [IDEA]." *Id.* If not, the Court must determine whether the

benefits of such services far outweigh "any marginal benefits received from mainstreaming." *Id.* If the services which cannot be provided in the general education setting far outweigh the benefits of mainstreaming, the **[**21]** segregated setting is considered appropriate. This Court has broken this category down into a three-step inquiry:

First, the Court must identify the supposedly superior services of the non-mainstream setting. Second, the Court must determine whether those services could be provided in a mainstream setting. Finally, if the benefits of the non-mainstream setting are not portable to the non-segregated setting, the Court must determine whether those non-portable benefits far outweigh the benefits of mainstreaming. If Plaintiffs prevail on either of the latter two steps, they will have established [the child] does not fall in *Roncker's* second category of students for whom mainstreaming is inappropriate.

[*L.H. v. Hamilton Cty. Dep't of Educ., No. 1:14-CV-00126, 2016 U.S. Dist. LEXIS 153322, 2016 WL 6581235, at *19 \(E.D. Tenn. Nov. 4, 2016\), aff'd in part, rev'd in part and remanded, 900 F.3d 779 \(6th Cir. 2018\).*](#)

Knox County argues that M.Q. only progressed toward his IEP goals in preschool because of the unique aspects of the blended program and that this reflects his need for a highly staffed and highly supported environment and direct, repeated, and small group instruction. Knox County considers these services superior because the kindergarten classroom cannot be modified enough to meet M.Q.'s specific needs. However, Ms. Taylor and Ms. Dye both testified **[**22]** that the supports offered in the blended classroom can be provided in the general education kindergarten classroom. Knox County's autism support team is available to assist and train paraprofessionals or other support staff to provide M.Q. with needed supports and services. Therefore, the services which Knox County deems superior can be provided in a mainstream setting. M.Q. does not fall within the second category of students who **[*761]** may be separated from the general education classroom.

Even if the general education classroom could not be modified to fully mimic the environment of the blended classroom, the non-portable benefits of the CDC-A program do not far outweigh the benefits of mainstreaming. Knox County asserts that M.Q. cannot make appropriate progress toward his IEP goals without some time away from his non-disabled peers. Yet, two of M.Q.'s IEP goals are aimed at developing his socialization and communication skills, which, according to the expert testimony, require interaction with non-disabled peers. Dr. Kate McLeod, who holds a Ph.D. in

special education, testified that students who are included in the general education setting with appropriate supports and services make **[**23]** increased academic, behavioral, social, and communication improvements. Moreover, Dr. McLeod and Dr. Ihrig testified that the transition between the general education and special education settings throughout the day would impede communication skills. Specifically, Dr. Ihrig opined that this transition would be difficult for M.Q. because he would have to adapt to two separate environments with different sets of rules and expectations. With the proposed placement for just under three nonconsecutive hours per day in the general education setting, M.Q. would likely be prevented from forming meaningful relationships with his non-disabled peers, thereby reducing any benefit of that designated time.

Knox County focuses on M.Q.'s unique learning style and academic needs—slower pace, direct instruction, and high levels of supports—and contends that M.Q. cannot make appropriate progress in the general education kindergarten class due to the fast pace and academically driven curriculum. Melody Hobbs, Knox County's early childhood education expert, testified that the pacing of the kindergarten classroom would be too much for M.Q. This "perception that a segregated [setting] is academically superior **[**24]** for a [disabled] child may reflect no more than a basic disagreement with the mainstreaming concept" and "[s]uch a disagreement is not...any basis for not following the [IDEA's] mandate." *Roncker, 700 F.2d at 1063*. The Sixth Circuit has made it clear that the correct standard is whether the child can make appropriate progress toward their IEP goals in the general education setting with supports and services, rather than whether the child can master the general education curriculum. *L.H., 900 F.3d at 793*. Based on the evidence in the record and M.Q.'s progress in the blended classroom, he can make appropriate progress toward his IEP goals in the general education kindergarten classroom with the proper supports and services.

Knox County argues that it is not required to "try" the general education classroom prior to considering any other placement. However, Knox County is required by the IDEA to place disabled children in their LRE. Out of the continuum of special education services offered—(1) kindergarten; (2) kindergarten with a little special education support outside the classroom; (3) kindergarten with a little more special education support outside the classroom; and (4) the CDCA self-contained classroom—Knox County chose **[**25]** the most restrictive for M.Q. Because M.Q. does not fall within the categories of students who cannot be mainstreamed, Knox County's proposed segregated placement is not M.Q.'s LRE and, thus, violates the IDEA.

V. CONCLUSION

For the foregoing reasons, the Court concludes that M.Q. has established by a preponderance of the evidence that Knox County's proposed placement in M.Q.'s **[**762]** May 15, 2019 IEP was not M.Q.'s LRE. Accordingly, Knox County's Motion for Judgment on the Pleadings [Doc. 20] is **DENIED** and M.Q.'s Counter Motion for Judgment [Doc. 21] is **GRANTED**.

SO ORDERED:

/s/ Clifton L. Corker

United States District Judge

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