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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

KNOX COUNTY, TENNESSEE,
Plaintiff-Appellant (21-5556) / *Appellee* (22-5268),

v.

M.Q., the student; N.Q. and J.Q., the student's parents/guardians,
Defendants-Appellees (21-5556) / *Appellants* (22-5268).

Nos. 21-5556/22-5268

Appeal from the United States District Court for the Eastern District of Tennessee at Knoxville.
Nos. 3:20-cv-00125; 3:20-cv-00173—Clifton Leland Corker, District Judge.

Argued: December 6, 2022

Decided and Filed: March 17, 2023

Before: SUHRHEINRICH, CLAY, and DAVIS, Circuit Judges.

COUNSEL

ARGUED: Amanda Lynn Morse, KNOX COUNTY, Knoxville, Tennessee, for Knox County, Tennessee. Justin S. Gilbert, GILBERT LAW, PLC, Chattanooga, Tennessee, for M.Q., N.Q., and J.Q. **ON BRIEF:** Amanda Lynn Morse, KNOX COUNTY, Knoxville, Tennessee, for Knox County, Tennessee. Justin S. Gilbert, GILBERT LAW, PLC, Chattanooga, Tennessee, Jessica F. Salonus, THE SALONUS FIRM, PLC, Jackson, Tennessee, for M.Q., N.Q., and J.Q. Ellen M. Saideman, LAW OFFICE OF ELLEN MARJORIE SAIDEMAN, Barrington, Rhode Island, Selene A. Almazan-Altobelli, COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC., Towson, Maryland, for Amicus Curiae.

OPINION

DAVIS, Circuit Judge. M.Q., a student attending public school in Knox County, Tennessee, and his parents (collectively, "M.Q.") sued Knox County Schools ("KCS") for violations of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 *et seq.*; Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794; and Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.* They allege that KCS improperly excluded M.Q. from the general education classroom setting and placed him in a self-contained classroom[1] for students with disabilities for nearly all his kindergarten academic instruction. The district court held that this placement violated the IDEA but rejected M.Q.'s claims that also it also violated Section 504 and the ADA. For the reasons outlined below, we **AFFIRM** the judgment of the district court.

I.

M.Q. is a child of tender years diagnosed with autism.[2] M.Q. has developmental delays in three key areas: (1) communication skills; (2) social/emotional behavior; and (3) prevocational skills. He has had an Individual Education Plan ("IEP") in place since his preschool years tailored to his individual education needs.

Communication. M.Q. is largely nonverbal, but he occasionally utters simple words and phrases. This verbal limitation significantly curtails his ability to convey ideas, ask and answer questions, and partake in age-appropriate activities. Dr. Charles Ihrig, a psychologist retained by M.Q.'s parents, determined that M.Q.'s communication skills at five years old were comparable to a child under two years old, placing him in the lowest one percentile of his peers. Still, M.Q. has developed a communication style of his own in which he communicates his needs

[1]A self-contained classroom is a segregated setting, in that it only serves students with disabilities to the exclusion of their typically developing or non-disabled peers. A regular education classroom is one in which less than half of the students enrolled have IEPs.

[2]The events relevant to this case spanned the years of 2017 to 2020, when M.Q. was between the ages of about four and six.

nonverbally—including through physical gestures and purposive eye contact.[3] He is also learning to use an Augmentative and Alternative Communication ("AAC") device to communicate.

Social/Emotional. M.Q.'s interactions with others are characterized by his socially withdrawn demeanor. Dr. Ihrig observed that it was difficult to personally engage M.Q., and that his interpersonal skills at five years were similar to a ten-month-old's. Notwithstanding these obstacles, M.Q. does sometimes play with and work alongside his classmates, and "likes to follow along with what his peers are doing." He also more routinely interacts with familiar adults.

Prevocational.[4] M.Q.'s prevocational delays make it difficult for him to participate in large groups and teacher-directed activities at school. He requires more supports than other students to successfully engage in these kinds of tasks but demonstrates stronger skills during self-selected activities and while working in small group settings. Calming sensory resources, such as fidgets, also help M.Q. stay on task at school.

Despite the described challenges, M.Q. is a well-behaved and bright student by all accounts. The district court noted that M.Q. is "compliant, cooperative, and responds well to redirection." Dr. Ihrig's evaluation further showed that M.Q. "appears not to be cognitively impaired"[5] and comprehends much of what is communicated to him. Moreover, M.Q.'s preschool performance showed that he has the capacity to learn and grow with respect to his communication, social/emotional, and prevocational skills, as demonstrated by progress he made on his IEP goals throughout preschool.

M.Q. was enrolled in KCS's preschool program from 2016 to 2019. KCS initially placed him in self-contained preschool classrooms during Academic Years ("AY") 2016–17 and 2017–

[3]For instance, M.Q. uses a three-point shift in gaze to bring an adult's attention to things of interest. This involves looking at an adult, then to an object he wants (for example), and then back to the adult.

[4]Prevocational skills are "learning-to-learn skills . . . that you need to be ready to be in school and learn," such as the ability to follow a routine and stay on task.

[5]Dr. Ihrig couched this finding in the fact that it is not possible to comprehensively evaluate M.Q.'s cognitive abilities given his delays in communication.

18. In each year, M.Q. had an IEP tailored to his unique needs, and he made good progress toward his IEP goals in AY 2017–18. When his IEP Team met in advance of AY 2018–19, it determined that he would not be required to enroll in summer school (referred to as "Extended School Year" or "ESY"). And his progress showed he could potentially benefit from a mainstream setting. As a result, the Team decided to place him in an inclusive preschool classroom beginning in August 2018. The Team established four IEP goals for M.Q. to work toward in AY 2018–19 (the "2018–19 IEP"), each of which again targeted his communication, social/emotional, and prevocational abilities.

In accordance with his IEP, M.Q. enrolled in a blended preschool classroom in AY 2018–19 as planned. Following a general education curriculum designed to prepare students for kindergarten, one teacher and two teaching assistants led classroom instruction. M.Q. attended this program for 5.25 hours a day, three days a week. The classroom had many supports built-in for all students, regardless of ability. KCS also provided M.Q. with a specific set of accommodations, including: (1) push-in speech-language therapy,[6] (2) push-in occupational therapy, (3) visual supports (e.g., picture boards depicting discrete steps needed to complete a task), (4) sensory supports (e.g., fidgets, weighted blankets, cube chairs), (5) adult cuing and prompting (e.g., hand-over-hand physical assistance completing tasks), (6) multimodal communication supports (e.g., training in the use of an AAC device and pictures as means of expression), and (7) increased wait time.

The eight progress reports M.Q. received during AY 2018–2019 represent the full universe of written data on his educational progress that year. He received a score on a scale of 4 to 6 for each of his IEP goals in every reporting period. A 4 meant that he achieved a particular goal; a 5 meant that he was on track to do so; and a 6 meant that he was not expected to meet the goal by the end of the IEP period. M.Q. received 5s on all his goals in each of his AY 2018–19 progress reports. In every reporting period, his educators also commented that M.Q. "is making good progress toward his [IEP] goals," or that he "continues to make progress toward his goals."

[6]A push-in service is one provided within the general education classroom itself. Pull-out services, by contrast, take students with disabilities into separate, self-contained locations. According to M.Q.'s expert on inclusion, Dr. Kate MacLeod, best practice is to have student support services—like physical, occupational, and speech-language therapy—push into the regular education setting.

The IEP Team then met on May 15, 2019, to craft M.Q.'s kindergarten IEP (the "Proposed IEP") for AY 2019–20. A general education preschool teacher attended the meeting, but no general education kindergarten teacher was present. The Proposed IEP generated during this meeting contains two key pieces of information: M.Q.'s then present levels of performance and KCS's suggested kindergarten placement for M.Q.

M.Q.'s present levels of performance showed that he was still experiencing difficulties due to his functional deficits—but that he had been improving. One key takeaway was that he showed he could successfully engage with the general education curriculum when provided with the appropriate supports. For that reason, the IEP Team again decided M.Q. did not need to attend summer school leading into the next academic year.

The IEP Team also discussed M.Q.'s kindergarten classroom placement. KCS wanted to place M.Q. in a general education class primarily for non-academic portions of the school day and a self-contained special education classroom for the better part of his academic instruction. KCS's plan provided that:

> (1) M.Q. would remain in his mainstream preschool classroom for the remainder of AY 2018–19, which, by then was less than one week;
>
> (2) In kindergarten, M.Q. would be mainstreamed for 2.25 hours per day; specifically, during arrival, departure, lunch, recess, "encore" (music, art, physical education, and library), and 15 minutes of "CARE" (a kindergarten phonics program); and
>
> (3) M.Q. would attend a comprehensive development classroom ("CDC-A") for 4.75 hours each day for all core academic content[7] (excluding the 15-minute phonics lesson mentioned above).

The CDC-A program where M.Q. would spend most of his time is a self-contained setting which caters to children with disabilities spanning various ages and grade levels. KCS explained that in view of his significant developmental delays, M.Q. would especially benefit from the small group explicit instruction, play-based curriculum, and slow pace of the CDC-A program. In contrast, KCS believed that the general education kindergarten class would be too fast-paced and academically driven for M.Q.

[7]Here, core academic instruction includes English/Language Arts, math, science, and social studies.

M.Q.'s parents objected to the CDC-A placement and instead wanted him to remain in the regular education classroom full-time with the aids and services he needed. M.Q.'s mother pointed out that he made great progress during his time in general education preschool and that he thrived when challenged. His parents ultimately refused to sign off on the Proposed IEP.

After the May 2019 IEP meeting, M.Q.'s parents requested a due process hearing with the Tennessee Department of Education. They charged that KCS's proposed placement in the CDC-A classroom deprived him of the right to be educated in his least restrictive environment ("LRE") under the IDEA, Section 504, and the ADA. An ALJ heard the case in December 2019 and concluded that (1) the CDC-A classroom proposed for M.Q.'s kindergarten year was not his LRE and thus violated the IDEA; and (2) M.Q.'s claims under Section 504 and the ADA were pretermitted as duplicative given his success under the IDEA.

KCS petitioned the district court to review the ALJ's LRE ruling. For his part, M.Q. objected to the ALJ's determination on his Section 504 and ADA claims. The district court affirmed the part of the ALJ's decision finding an IDEA violation but overturned his conclusion that M.Q.'s Section 504 and ADA claims were pretermitted. But it ultimately overruled M.Q.'s objection on the merits, explaining that M.Q. failed to show how KCS discriminated against him in crafting his IEP. The parties then brought the present appeals, which were consolidated for our consideration here.

II.

District courts review state administrative IDEA determinations under a "modified *de novo*" standard. *L.H. v. Hamilton Cnty. Dep't of Educ.*, 900 F.3d 779, 790 (6th Cir. 2018). This standard of review requires district courts to independently re-examine the record and make determinations based on a preponderance of the evidence. *Burilovich v. Bd. of Educ. of Lincoln Consol. Schs.*, 208 F.3d 560, 565–66 (6th Cir. 2000) ("[A] court cannot simply adopt the state administrative findings without an independent re-examination of the evidence."); *see L.H.*, 900 F.3d at 790; *see also* 20 U.S.C. § 1415(i)(2)(C) (establishing the preponderance of the evidence standard). That said, district courts must also give "due weight" to ALJs' findings. *L.H.*, 900 F.3d at 790. Giving "due weight" entails (1) setting aside those findings *only* where

"the evidence before the court is more likely than not to preclude the administrative decision from being justified based on the agency's presumed educational expertise, a fair estimate of the worth of the testimony, or both"; and (2) deferring to the ALJ on matters involving educational expertise. *Burilovich*, 208 F.3d at 567. In turn, this court reviews the district court's findings of fact for clear error and its legal conclusions *de novo*. *L.H.*, 900 F.3d at 791; *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 850 (6th Cir. 2004).

III.

The IDEA provides states with funding for special education services in return for their pledge to provide students with disabilities a free appropriate public education ("FAPE"). 20 U.S.C. § 1412(a)(1). A FAPE includes "specially designed instruction . . . to meet the unique needs of a child with a disability" along with support services "required to assist a child . . . to benefit from" that instruction. *Id.* § 1401(9), (26), (29). The IDEA requires states to deliver FAPE through individualized educational programs, or IEPs, tailored to the needs of each eligible student, *id.* § 1414(d), which are drafted by various stakeholders on an IEP Team, *see id.* § 1414(d)(1)(B) (requiring IEP Teams to include "not less than 1 regular education teacher of such child," among other individuals). IEPs must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017); *see also Bd. of Educ. v. Rowley*, 458 U.S. 176, 207 (1982). To maximize the benefits of mainstreaming students, states must also provide FAPE in the "least restrictive environment" possible. *Id.* § 1412(a)(1), (5). The IDEA's LRE requirement is set forth in 20 U.S.C. § 1412(a)(5)(A), which reads:

> *To the maximum extent appropriate*, children with disabilities . . . are [to be] educated 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.

Id. (emphasis added). Determining a student's LRE requires the school district to consider several factors, including the student's instructional needs as well as the extent to which the student would benefit from a self-contained learning setting. *L.H.*, 900 F.3d at 789. These

considerations are counterbalanced by the statute's mandate to integrate students with disabilities and their non-disabled peers to the maximum extent appropriate. As a result, certain classroom placements that appear to offer superior academic services to students with disabilities may, nevertheless, be deemed unsuitable learning environments because they unnecessarily remove those students from general education. *Id.* ("[I]n some cases, a placement which may be considered better for academic reasons may not be appropriate because of the failure to provide for mainstreaming.") (internal quotation marks omitted).

IV.

A.

KCS first challenges the district court's finding that it violated the IDEA's procedural requirements by failing to include a general education kindergarten teacher on M.Q.'s IEP Team. Courts "strictly review" IEPs for compliance with the IDEA's procedures, although "technical deviations will not render an IEP invalid." *Deal*, 392 F.3d at 854 (quoting *Dong* ex rel. *Dong v. Bd. of Educ. of Rochester Cmty. Schs.*, 197 F.3d 793, 800 (6th Cir. 1999)). And we afford greater deference to school districts' IEP determinations when the procedures outlined in the IDEA have been followed. *Burilovich*, 208 F.3d at 566 (quoting *Dong*, 197 F.3d at 800). One such IDEA procedure provides that IEP Teams must include at least one regular education teacher when the student is to participate in a regular education classroom for any part of the school day. 20 U.S.C. § 1414(d)(1)(B)(ii). This regular education teacher "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 about how best to teach the child." 64 Fed. Reg. 12,406, 12,477 (Mar. 12, 1999). If a child has multiple general education teachers, the IEP Team still need only include *one* of them. *Id.*

The May 2019 IEP Team included a general education *preschool* teacher. M.Q. argues that the Team should have included his general education *kindergarten* teacher since the Proposed IEP was to be implemented in the kindergarten setting. KCS counters that it sufficed to include any one of M.Q.'s general education teachers on the IEP Team. The district court reasoned that:

> 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 [the preschool teacher's] presence resulted in substantive harm. Therefore, [1] the absence of a general education kindergarten teacher *does not entitle M.Q. to relief* under the IDEA. Nonetheless, [2] [KCS's] *failure to satisfy the procedural requirements* reduces the deference afforded to its placement decision.

(Emphasis added). KCS contends that the court's conclusion is internally inconsistent because it held that the composition of the IEP Team did not violate the statute yet proceeded to reduce its deference to KCS as if it *had* in some way erred. KCS urges the court to overturn this conclusion of law.

The district court correctly found that KCS complied with the statutory requirements—albeit under their most literal interpretation. *See Deal*, 392 F.3d at 854 (noting we must "strictly review" for procedural exactness). IEP Teams must include at least one general education teacher who will be responsible for "implementing a portion of the IEP." Here, although the IEP Team ostensibly met to plan for M.Q.'s kindergarten year, the Proposed IEP also included provisions for the remainder of M.Q.'s preschool year. As a practical matter, barely a week remained in the school year; the IEP Team met on May 15, 2019, and the last day of school (i.e., the end date of the IEP for that academic year) was May 23, 2019. Nonetheless, M.Q. was still enrolled in preschool at the time and his general education preschool teacher *was* present at the IEP meeting—a fact M.Q. does not dispute. As such, KCS satisfied the letter of the law by having someone "responsible for implementing *a portion* of the IEP" attend the meeting. 64 Fed. Reg. at 12,477 (emphasis added). While it might have been preferable to have a kindergarten teacher present at the meeting, there was no procedural violation in failing to do so here.

Since the composition of the IEP Team did not violate any procedure, KCS's placement decision should not have received reduced deference—it in fact should have been afforded more deference. *Dong*, 197 F.3d at 800 ("If the procedural requirements of the IDEA are met, greater deference is to be afforded to the district's placement decision."). Even granting KCS greater deference, however, after independently reviewing the administrative record and the district

court's ultimate conclusions, we find that any error on this point was harmless. This is because greater deference does not mean complete deference and as discussed more fully below, the district court's decision was firmly supported by expert testimony credited by the ALJ, the facts relating to M.Q.'s progress in school, and applicable law. *See, e.g., L.H.*, 900 F.3d at 795 (declining to defer to the school district on an LRE issue where the school's proposed placement was one "that the IDEA was designed to remedy, not encourage or protect"); *Berger v. Medina City Sch. Dist.*, 348 F.3d 513, 519 (6th Cir. 2003); *Roncker* ex rel. *Roncker v. Walter*, 700 F.2d 1058, 1062 (6th Cir. 1983) (noting the due weight that must be afforded to state administrative proceedings).

B.

KCS next argues that the district court failed to independently re-examine the record which, in its view, led to several erroneous factual conclusions. We review the district court's factual findings for clear error. *E.g.*, *L.H.*, 900 F.3d at 791; *Deal*, 392 F.3d at 850.

KCS first takes issue with the district court's finding that M.Q. made progress on his IEP goals in the general education preschool setting. It argues that the finding rested on misconceptions that (1) the *sole* measures of M.Q.'s IEP progress were his eight progress reports, and (2) M.Q. received a score of five for all goals in each progress report that school year. KCS's arguments on this score are unavailing and we find no clear error. As an initial observation, the district court never opined that the sole measures of M.Q.'s progress were the scores in his progress reports, although the ALJ and the court did find that data persuasive. And regarding those scores, the record shows that M.Q. *did* receive 5s on all goals in his AY 2018–19 progress reports, with no 4s or 6s appearing anywhere on the progress reports. KCS's suggestion of error, therefore, appears off-base on this point. Moreover, the progress report scores are consequential data points—not only because they represent M.Q.'s ability to make progress under his IEP, but also because his lead teacher assigned those scores. That is to say, the person most familiar with M.Q.'s classroom performance consistently found that he was on track to meet his goals, and consistently awarded him 5s. The court was right to consider this valuable information and it was within the court's discretion to weigh this data heavily in its analysis, to the extent it did so. *See e.g., L.H.*, 900 F.3d at 790, 794 (citing 20 U.S.C. § 1415(i)(2)(C))

(explaining district courts' role in weighing the preponderance of the evidence contained in the record as a whole and this court's subsequent review for clear error); *Deal*, 392 F.3d at 849–50 (same); *Knable* ex rel. *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 764 (6th Cir. 2001) (same).

Relatedly, KCS broadly maintains that the district court erred by overlooking material evidence. It argues that the court fixated on the numeric portions of M.Q.'s progress reports while eliding, for example, his educators' substantive feedback on his classroom performance in those same reports. But KCS makes no effort to illuminate *how* the facts the district court allegedly disregarded would contribute to a finding of clear error. Nor does it point to any authority requiring the court to explicitly walk through every material piece of evidence in the record in its decision. As earlier noted, the modified *de novo* standard of review required the court to re-examine the record and make findings of fact based on the preponderance of the evidence. *Burilovich*, 208 F.3d at 567. We find that the court fulfilled this obligation, and that its ruling did not merely rely on the numeric scores in M.Q.'s progress report scores alone. Indeed, the court gleaned facts from various parts of the administrative record which demonstrated, among other things, that (a) M.Q.'s developing communication skills (as described in the Present Levels of Performance sections of his 2018–19 and Proposed IEPs, and in the 2018–19 IEP's meeting notes) "show[ed] his capacity to improve" in general education; (b) M.Q. improved at socializing and interacting with other students (as reflected in his progress reports and the 2018–19 and Proposed IEPs); (c) M.Q.'s IEP Team, populated mostly by KCS staff, determined (and documented in the 2018–19 and Proposed IEPs) he did not need to attend summer school because of his demonstrated progress in preschool; and (d) the IEP Team intended to enroll M.Q. in a fourth day of preschool if three days of attendance each week was insufficient for his needs (which it noted in the 2018–19 IEP's meeting notes), but he never was enrolled in an additional day of school. These, and other, observations made by the district court belie KCS's claim that the district court failed to independently reexamine the administrative record and instead narrowly focused on M.Q.'s progress report scores. Consequently, we find

that the court did not clearly err in finding that M.Q. made progress on his IEP goals in the general education classroom.[8]

Next, the district court determined that the supports and services M.Q. would receive in the CDC-A classroom could also be provided in a mainstream setting. KCS argues that the district court "ignored the fact that all [KCS] staff testified that the services M.Q. needs to make *appropriate* progress *could not be provided* in [the] general education classroom *full-time*," resulting in clear error. (Emphasis in original). KCS submits that, properly considered, the balance of evidence demonstrates that M.Q. requires too much support to be integrated into regular education kindergarten due to its (1) fast-paced, academics-oriented curriculum, as well as its (2) relatively large class sizes, which would lead to (3) uncontrollable environmental distractions.

KCS's argument sounds a lot like a claim of impracticality. We have held that a school district cannot prevail in an LRE case merely on the grounds that it believes mainstreaming is "impossible, impractical, or counterproductive" because "the situation became challenging." *L.H.*, 900 F.3d at 794–95 (adding that "the IDEA was designed to remedy, not encourage or protect" school districts' "unwilling[ness] or [inability] to properly engage in the process of mainstreaming" simply because "they deemed it futile or useless in light of [the student's] disability"). In *Roncker*, we similarly explained that "[t]he perception that a segregated institution is academically superior for a handicapped child may reflect no more than a basic disagreement with the mainstreaming concept." 700 F.2d at 1063.

KCS's position seems to conflict with these tenets. It posits that mainstreaming M.Q. would essentially redefine the general education classroom—emphasizing that "the [k]indergarten classroom *itself* cannot be modified enough to meet M.Q.'s specific needs." Yet KCS concedes that many of the supports M.Q. requires *can* be provided in general education. Its own employees' testimony bears this out. For instance, Elizabeth Taylor (M.Q.'s preschool teacher) and Jennie Sullivan (occupational therapist) agreed that regular classrooms can cater to

[8]KCS raises an additional argument that the district court was "under the mistaken impression that progress reports align with the academic year." Even if that is true, it does not establish any erroneous findings of fact relevant to this appeal.

M.Q.'s use of an AAC device. Taylor added that a paraprofessional and push-in speech and language therapist could be integrated into the mainstream setting for M.Q. And according to Amanda Dye (KCS's Preschool Program Facilitator), M.Q.'s need for visual and sensory supports can also be accommodated in the regular education setting. KCS witnesses Taylor, Sullivan, and Nicki Nye (a KCS special education program supervisor) similarly testified that educators can adapt kindergarten's fast-paced and academics-focused curriculum for students with disabilities by providing them with adult prompting and additional time to complete tasks, among other things.

Dr. Kate MacLeod, M.Q.'s expert on special education and inclusion, likewise opined that none of M.Q.'s indicated supports and services (including his AAC device, visual supports, and fidgets) were only capable of being provided in a separate program like the CDC-A classroom. She emphasized that educators sometimes must think creatively to provide students the supports they need. An apt example of this is when Dr. MacLeod addressed KCS's concerns about class size (and to some degree, by extension, its other two concerns as well). She suggested that instead of segregating M.Q. from the regular education setting, KCS could utilize small group instruction, explaining:

> [I]f we are really working from inclusive best practices and really good teaching practices [in the kindergarten through grade 12 school system], we are thinking about *designing lessons from the start . . . so that students have access to small groups*, access to multiple means of representation of that content, of engaging in that content, and then showing what they know. And often that lends itself to small group settings. And small groups can be teacher led. They can be led by paraprofessionals. They can be student directed. So *there's lots of ways that we can think about small group [learning] that does not necessarily mean you have to be in a segregated, self-contained setting* [to gain the benefits of a small learning environment].

(Emphasis added). This recommendation is particularly fitting for M.Q., since his teachers believe he does best in small groups and one-on-one instruction. Dr. MacLeod also raised the possibility of placing M.Q. in a co-taught kindergarten classroom led by one special education teacher and one general education teacher. She highlighted that this arrangement creates opportunities for small group work led by each teacher. Dr. MacLeod offered still other ideas, including the option of providing M.Q. a paraprofessional in the regular classroom. She

envisioned that the paraprofessional could help provide M.Q. redirection, prompts, and AAC device support.

KCS never quite grapples with these aspects of Dr. MacLeod's testimony. Instead of explaining why small group instruction within the regular education classroom would *not* suffice for M.Q., for example, KCS doubles down on the notion that it would be impossible to mainstream M.Q. full-time under any circumstances. Neither the ALJ nor the district court was persuaded by this position. When juxtaposed with Dr. MacLeod's testimony (along with Taylor, Sullivan, Dye, and Nye's), KCS's stance hews closer to an unwillingness to mainstream M.Q. largely because it will be difficult to do so. But KCS's hesitancy or self-perceived inability to "properly engage in the process of mainstreaming" M.Q. is not enough. *See L.H.*, 900 F.3d at 795. The district court did not clearly err in finding that the supports M.Q. requires could adequately be provided in a mainstream setting. Therefore, its factual finding stands.

KCS next challenges the district court's findings that M.Q. "began interacting with other students" and that he "built up to mostly parallel play" in preschool. According to KCS, these statements incorrectly reflect a conclusion that M.Q. grew to regularly engage with his classmates in AY 2018–19, whereas in reality, he only occasionally welcomed peers into his space. This argument also misses the mark. The district court did not conclude that M.Q. regularly interacted with other students. Rather, the court described M.Q.'s progression from solitary to parallel play (which, it explained, involves playing in the same area as other children but not directly with them). The IEP Team's notes from the 2018–19 IEP and Proposed IEP directly state as much. The court made no error here.

Finally, KCS contends that the district court should have weighed hearing testimony differently. It argues that the court placed too much weight on the testimony of M.Q.'s expert witnesses, Dr. MacLeod and Dr. Ihrig. It insists that its own witnesses were more familiar with M.Q. and his classroom needs, as well as with the resources available within the school district. Accordingly, *their* opinions should have carried the day.

This argument lacks merit. To the extent the court (and the ALJ before that) found M.Q.'s evidence more persuasive than KCS's, it did not clearly err in so doing. *See, e.g.*, *Woods*

v. Northport Pub. Sch., 487 F. App'x 968, 974 (6th Cir. 2012) (Table) ("Our prior opinions make clear . . . that deference is due to the [Independent Hearing Officer]. The district court was not in a position to give deference to the [school district's] professionals *and* the [ALJ], whose findings are in conflict."). As this court explained in *L.H.*, under similar circumstances:

> The crux of this argument is that the district court should have deferred to the opinions of [the school district's] teachers and staff because they had spent far more time with [the student] and were more familiar with his academic record and individual idiosyncrasies, so they knew best how he should be educated. If the law were that a court must defer to the opinions of those who spend the most time with the student and presumably know him best, then there would be no place for experts. . . . [And t]aking [the school district's] argument to this ultimate end, the district court would actually defer to the student's parents, who surely know the student the best, regardless of any expertise.

L.H., 900 F.3d at 794. We thus concluded that the school district came "nowhere close to showing any clear error" in the district court's findings of fact merely by arguing that the student's expert testimony was unpersuasive. *Id.* This reasoning applies with equal force here. Finders of fact have wide latitude in making credibility determinations. It was well within the district court's discretion to give weight to certain experts' opinions and not to rely on the opinions of others. *See, e.g.*, *Deal*, 392 F.3d at 851–52; *Metro. Bd. of Pub. Educ. v. Guest*, 193 F.3d 457, 464 (6th Cir. 1999) (district court did not err where it considered all the testimony and credited the witnesses it deemed most persuasive). Its decision will not be disturbed on this ground.

KCS further argues that because Dr. Ihrig is not qualified as an expert on LRE or the IDEA, the district court should not have given his testimony more weight than KCS employees' testimony. But LRE is a *non-academic* restriction on IEPs that does not require educational expertise, *L.H.*, 900 F.3d at 789—so Dr. Ihrig's comparatively limited expertise on educational matters did not necessarily diminish the value of his testimony in this case. Moreover, Dr. Ihrig has conducted thousands of student evaluations to aid school districts in making placement decisions. The district court properly considered Dr Ihrig's input in this case, and it was not clearly erroneous for it to credit his testimony over that of other witnesses.

C.

KCS next asserts that the district court failed to consider whether the Proposed IEP would have satisfied the IDEA's substantive FAPE requirement. But this argument is not well-taken as it seems to conflate or confuse the issues. M.Q. does not contest that the Proposed IEP would have provided him a substantive FAPE. The question here is whether a substantive FAPE could have been furnished to him in a less restrictive setting than the one proposed by KCS. *Cf.* 20 U.S.C. § 1412(a)(5)(A) (setting forth students' right to be mainstreamed to the maximum extent appropriate). This is a separate and independent ground on which a court may invalidate an IEP. *Cf. L.H.*, 900 F.3d at 789 ("[I]n some cases, a placement which may be considered better for academic reasons may not be appropriate because of the failure to provide for mainstreaming.") (quoting *Roncker*, 700 F.2d at 1063). Thus, we deny KCS's appeal on this ground.

D.

Finally, we turn to the issue of M.Q.'s LRE. The ALJ and district court both found that KCS violated the IDEA's mandate to educate M.Q. in the LRE—meaning, "alongside non-disabled children to the maximum extent appropriate." *McLaughlin v. Holt Pub. Sch. Bd. of Educ.*, 320 F.3d 663, 671–72 (6th Cir. 2003); *see also* 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(ii). LRE determinations present mixed questions of law and fact which this court reviews *de novo*. *Knable*, 238 F.3d at 764.

A school may remove a disabled student from the regular class *only* when one of the following factors applies: (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). Additionally, where a segregated setting is considered "superior" to the regular classroom, the court must ask whether "the services which make that placement superior could be feasibly provided in a non-segregated setting"; if they can, then "placement in the segregated [environment] would be inappropriate under the [IDEA]." *Roncker*, 700 F.2d at 1063 (further noting that this framing "accords the proper respect for the strong preference in favor of mainstreaming"). We recently reaffirmed this tenet in *L.H.*, explaining that a classroom likely to

deliver great academic benefits to a student might nonetheless be unsuitable if it unnecessarily removes him from the mainstream setting. 900 F.3d at 789.

The parties agree that only the second factor is at issue here: whether the educational benefits M.Q. would gain from being mainstreamed would be "far outweighed" by the benefits of the CDC-A classroom.[9] We first consider why KCS believes that the CDC-A classroom is superior to general education for implementing virtually all of M.Q.'s academic instruction. Here, KCS treads old ground. It reiterates that the reality of M.Q.'s needs—e.g., his need for repetition, limited distractions, slow instructional pace, and small group settings—would prevent him from making appropriate progress in the regular kindergarten classroom. It posits that the CDC-A classroom is ideal because it has fewer students, moves at a slower pace, and builds in time for students to develop adaptive skills like toileting.

Undoubtedly, certain aspects of the CDC-A classroom are promising for M.Q. No one disputes that he does best in small group settings, for instance, and all agree that he has significant needs. But our inquiry must go further, asking whether the services "which make [the CDC-A] placement superior could be feasibly provided in a non-segregated setting." *Roncker*, 700 F.2d at 1063. The answer emerges from our earlier discussion of findings based on the administrative record. The record demonstrates that M.Q. succeeded in a blended classroom environment with the use of supplementary aids and services. Dr. MacLeod also found that the Proposed IEP contains no goals that necessarily require M.Q. to pursue them in a self-contained classroom. And KCS's Preschool Program Facilitator, Dye, concurred that "every one of [M.Q.'s IEP goals] could be worked on" in the general education setting. The district court therefore permissibly determined that a regular kindergarten class *could* be modified to provide M.Q. the resources he needs—even if it could not fully mimic the preschool environment in which M.Q. succeeded. This conclusion survives even if it requires KCS to exercise some creativity (e.g., by implementing co-teaching or introducing a paraprofessional to the classroom).

[9]There is no dispute that M.Q. could benefit from some form of mainstreaming; this is partly evidenced by the fact that the Proposed IEP places M.Q. in general education for about a third of the school day. And KCS concedes that M.Q. presents no disruptive behavioral issues.

And it is no argument to say that mainstreaming is "impossible, impractical, or counterproductive" simply because "the situation [is] challenging." *L.H.*, 900 F.3d at 794–95.

Portions of Dr. MacLeod's opinion also warrant further attention here.[10] She underscores the *non-academic* benefits M.Q. stands to gain in regular education—a relevant consideration, given M.Q.'s IEP goals concerning his interpersonal and self-regulation skills. *See L.B.* ex rel. *K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 978 (10th Cir. 2004) (ruling that a special education classroom was not the LRE for a student whose "primary needs involved improving her social skills," because the mainstream setting would "provide[] [her] with appropriate role models" and "was generally better suited to meet [her] behavioral and social needs"). For example, Dr. MacLeod calls attention to the fact that integration exposes students with disabilities to non-disabled students as a matter of course. In turn, non-disabled students serve as role models of age-appropriate communication, social/emotional, and prevocational skills for children like M.Q. who have delays in these areas. By contrast, she opined that the CDC-A setting proposed by KCS would potentially include children who are *not* suitable peer models for M.Q., such as older students (up to fifth grade) who may exhibit more mature language and advanced behavioral issues than students of kindergarten age.

Dr. MacLeod elaborated on how the Proposed IEP could stifle M.Q.'s development in other ways. She explained that children who move in and out of the mainstream setting—or who are only present at times like lunch and recess—are often perceived by other students as "visitors." This hampers their ability to "develop meaningful and authentic relationships" with their classmates. Such a scenario might pose a challenge to M.Q.'s communication goals since children generally socialize with the peers they see the most throughout the day. Compounding this issue is the fact that M.Q.'s classmates may have trouble communicating with M.Q. via his AAC device without sufficient time to practice at it. These considerations point up the many benefits that M.Q. would gain from regular education.

[10]Dr. MacLeod is the only expert in this case characterized by the ALJ as "steeped in the field of inclusion of students with disabilities in the regular education setting."

As to the question of whether the CDC-A program's purported benefits "far outweigh" those of the regular classroom, for all the reasons discussed, we find they do not. An independent review of the record demonstrates that KCS placed M.Q. in a more restrictive educational setting than his disability required. The Proposed IEP therefore cannot stand. The district court correctly reached this conclusion, and we affirm its judgment.

V.

In his appeal, M.Q. argues that the district court applied an incorrect legal standard to his Section 504 and ADA claims. Having reviewed the issue *de novo*, *L.H.*, 900 F.3d at 791, we conclude that the court properly applied the law.

While the IDEA guarantees individually tailored special education services to students with disabilities, Section 504 and the ADA prohibit discrimination against individuals with disabilities more broadly. *See Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 170–71 (2017) (noting that there is "some overlap in coverage" among these laws). As relevant here, however, both Section 504 and the ADA contain provisions that echo IDEA's LRE requirement.

Section 504 provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). This prohibition applies to public schools that receive federal financial assistance. *Id.* § 794(b)(2)(B). The Attorney General promulgated implementing regulations requiring states to educate students with disabilities alongside their non-disabled peers "to the maximum extent appropriate." 34 C.F.R. § 104.34(a) (adding that students with disabilities must remain in the general education environment absent a showing that they cannot be satisfactorily educated there despite provision of supplementary aids and services). Section 504 further requires states to assure "meaningful access" to their programs by making reasonable accommodations as may be necessary. *See Doe* ex rel. *K.M. v. Knox Cnty. Bd. of Educ.*, 56 F.4th 1076, 1087–88 (6th Cir. 2023) (citing *Alexander v. Choate*, 469 U.S. 287, 301 (1985)).

Subsequently, Congress enacted the ADA partly to combat discriminatory segregation of individuals with disabilities from the rest of society. 42 U.S.C. § 12101(a)(2). In service of this goal, Title II of the ADA—which was modeled after Section 504, *McIntyre v. Eugene Sch. Dist. 4J*, 976 F.3d 902, 912 (9th Cir. 2020)—provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132; *see also id.* § 12131(1) (defining "public entity" as any State or local government and its agencies). Its implementing regulations provide that public entities "shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). "The 'most integrated setting' is one 'that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.'" *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 459 (6th Cir. 2020) (quoting *Olmstead v. L.C.* ex rel. *Zimring*, 527 U.S. 581, 592 (1999)). Moreover, the ADA requires public entities to make reasonable modifications to their policies, practices, or procedures to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7)(i); *see also Doe*, 56 F.4th at 1087 ("The key word in this regulation (modification) 'connotes moderate' (not significant) change.") (citing *Sandison v. Mich. High Sch. Athletic Ass'n, Inc.*, 64 F.3d 1026, 1037 (6th Cir. 1995)).

"Claims brought under the ADA and Section 504 generally are evaluated together." *M.G.* ex rel. *C.G. v. Williamson Cnty. Schs.*, 720 F. App'x 280, 287 (6th Cir. 2018); *see also S.S. v. E. Ky. Univ.*, 532 F.3d 445, 452–53 (6th Cir. 2008) (adding that they are considered in tandem because "the reach and requirements of both statutes are precisely the same") (quoting *Weixel v. Bd. of Educ. of N.Y.*, 287 F.3d 138, 146 n.6 (2d Cir. 2002)); *Waskul*, 979 F.3d at 459–60 (same). Plaintiffs must establish each of the following elements to prevail under either law:

> (1) The plaintiff is a "handicapped person" under the [law]; (2) The plaintiff is "otherwise qualified" for participation in the program; (3) The plaintiff is being excluded from participation in, or being denied the benefits of, or being subjected to discrimination under the program solely by reason of his handicap; and (4) The relevant program or activity is receiving Federal financial assistance.

G.C. v. Owensboro Pub. Schs., 711 F.3d 623, 635 (6th Cir. 2013) (quoting *Campbell v. Bd. of Educ. of Centerline Sch. Dist.*, 58 F. App'x 162, 165 (6th Cir. 2003)).

The parties dispute only the third element. As the district court correctly noted, this prong asks whether a public entity discriminated against an individual on the basis of his disability. *See G.C.*, 711 F.3d at 635. In the education context, a showing of discrimination requires evidence of something more than a school district's failure to provide a FAPE. *S.S.*, 532 F.3d at 453. A plaintiff may allege disability discrimination under two available theories: intentional discrimination and failure to reasonably accommodate. *Wilson v. Gregory*, 3 F.4th 844, 859–60 (6th Cir. 2021); *Marble v. Tennessee*, 767 F. App'x 647, 650–51 (6th Cir. 2019); *Roell v. Hamilton Cnty.*, 870 F.3d 471, 488 (6th Cir. 2017); *Ability Ctr. of Greater Toledo v. City of Sandusky*, 385 F.3d 901, 907 (6th Cir. 2004). An intentional discrimination claim lies where the defendant treated someone less favorably on account of his disability; "[p]roof of discriminatory motive is critical." *Brooklyn Ctr. for Psychotherapy, Inc. v. Phila. Indem. Ins. Co.*, 955 F.3d 305, 311 (2d Cir. 2020) (quoting *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 609 (1993)); *see also Tchankpa v. Ascena Retail Grp., Inc.*, 951 F.3d 805, 818 (6th Cir. 2020). To prevail in a failure-to-accommodate claim, the plaintiff must show that the defendant reasonably could have accommodated his disability but refused to do so, *Keller v. Chippewa Cnty., Mich. Bd. of Comm'rs*, 860 F. App'x 381, 385 (6th Cir. 2021), and that this failure to accommodate "imped[ed] [his] ability to participate in, or benefit from, the subject program," *Campbell*, 58 F. App'x at 166. The plaintiff must establish both that his preferred accommodation was reasonable, *and* that the accommodation provided to him was unreasonable. *Doe*, 56 F.4th at 1088 (citing *Campbell*, 58 F. App'x at 166). Courts are mindful of school administrators' educational expertise in reviewing the reasonableness of their selected accommodations. *Id.* (citing *Campbell*, 58 F. App'x at 166–67).

M.Q. argued before the district court that he suffered discriminatory segregation in violation of Section 504's LRE provision, 34 C.F.R. § 104.34(a), and the ADA's integration mandate, 42 U.S.C. § 12132. The court denied M.Q.'s claims, finding no evidence of discrimination. Specifically, it determined that KCS did not engage in intentional discrimination

and that the CDC-A classroom represented a reasonable accommodation for M.Q.'s special education needs.

On appeal, M.Q. asserts that the district court confused the law. However, he does not argue that KCS intentionally discriminated against him. And he makes only a conclusory statement in his reply brief that KCS's failure to place him in his LRE was an *inherently* unreasonable accommodation. Critically, there is no precedent for this proposition. In framing the issue as he has, M.Q. fails to grapple with existing law establishing that KCS must provide *reasonable* accommodations for his learning deficits—not the *best* accommodations or his *preferred* accommodations. *Alexander*, 469 U.S. at 300 ("[W]hile a grantee need not be required to make 'fundamental' or 'substantial' modifications to accommodate the handicapped, it may be required to make 'reasonable' ones."); *Keller*, 860 F. App'x at 386–87 (finding that plaintiff received a reasonable modification, albeit not the one he preferred); *Campbell*, 58 F. App'x at 166–67 (explaining that whether parents' preferred placement would have been "superior" to the school district's chosen placement had no bearing on whether the latter reasonably accommodated the student's needs) (citing *Dong*, 197 F.3d at 800). There are certainly case-by-case arguments to be made that unduly restrictive classroom placements fail to reasonably accommodate students' needs—and this decision is not meant to close that door. *Cf. Anderson v. City of Blue Ash*, 798 F.3d 338, 356 (6th Cir. 2015) (noting that reasonable accommodation claims demand a highly fact-specific inquiry). But M.Q. has not adequately developed any such argument here.

Instead, M.Q. takes a different approach. He argues that KCS's failure to appropriately mainstream him constitutes a distinct form of discrimination under Section 504 and the ADA because both laws impose affirmative duties to integrate students with disabilities. In other words, M.Q. maintains that LRE violations are a distinctly cognizable form of discrimination under Section 504 and the ADA, that exists in addition to traditional intentional discrimination and failure-to-accommodate theories of liability. This novel argument cannot withstand scrutiny. For one thing, M.Q. adduces no legal support for his proposition. And we have previously held that it is not enough for students to allege that their schools failed particular duties imposed by Section 504 and ADA to successfully state a claim. *G.C.*, 711 F.3d at 635 ("[M]erely asserting

that the defendants failed to meet certain obligations under § 504 of the Rehabilitation Act and various regulations is insufficient to succeed on a Rehabilitation Act claim."). Rather, it remains the plaintiff's burden to satisfy each element in the multi-prong standard for such actions as set forth above. *Id.* It was therefore M.Q.'s responsibility to demonstrate how KCS intentionally discriminated or failed to reasonably accommodate him through the Proposed IEP. *E.g.*, *id.*; *Roell*, 870 F.3d at 488. M.Q. provides no legal basis for us to depart from this well-established legal framework.

Finally, the parties' briefing raised a question of whether plaintiffs in the education rights context must show that a school district exercised bad faith or gross misjudgment to establish liability under Section 504 or the ADA. This additional element for education-related claims has percolated over the years, stemming from the Eighth Circuit's pre-ADA decision in *Monahan v. State of Nebraska*, 687 F.2d 1164 (8th Cir. 1982). The *Monahan* court opined that Section 504 does not create general tort liability for educational malpractice, adding that "[w]e think . . . that either bad faith or gross misjudgment should be shown before a [Section] 504 violation can be made out, at least in the context of education of handicapped children." *Id.* at 1170–71. At least one panel of this court has echoed that requirement. *See Campbell*, 58 F. App'x at 167. And the district court in this case approached its analysis with *Monahan* and its progeny in mind. M.Q. argues that no such showing of bad faith or gross misjudgment is required, and there is support for this position. Among other things, outside of the education context, the ADA unequivocally *does not* limit its protection to instances of intentional discrimination, but instead extends to cases involving decision making that unintentionally results in exclusion as well. *See Ability Ctr. of Greater Toledo*, 385 F.3d at 904–13 (explaining that the ADA "prohibits public entities from denying, even unintentionally, qualified disabled individuals meaningful access to the services and benefits they provide"). It is thus hard to square a standard requiring bad faith or gross misjudgment, in all cases involving students' educational rights, with statutory protection that reaches even the unintentional denial of services. Additionally, requiring students with disabilities to prove bad faith or gross misjudgment—including for mere injunctive relief in the form of reasonable accommodations, for example—would impose an impossibly high bar for many plaintiffs. Moreover, *Monahan* considered the notion of a bad faith element in the context of deciding plaintiffs' claims for damages. And its dicta reflected that court's concern with *not*

judicially expanding school districts' tort liability under Section 504. *Monahan*, 687 F.2d at 1169–70. Thus, to the extent that students must plead bad faith or gross misjudgment to state a Section 504 or ADA claim, *Monahan* appears to suggest that this heightened requirement applies only where money damages are sought—and not necessarily to claims seeking only injunctive relief, as was the case here. Ultimately, however, we need not reach the issue of bad faith or gross misjudgment because M.Q.'s claims fail at an earlier point; he fails to show he suffered any form of discrimination.

Therefore, we affirm the district court's denial of M.Q.'s claims under Section 504 and the ADA. Because M.Q. fails at this threshold inquiry, we decline to reach the separate question of whether expert fees are available under these statutes at the remedies stage.

VI.

For the foregoing reasons, we **AFFIRM** the district court's rulings as to M.Q.'s claims under the IDEA, Section 504, and the ADA.