No. 26-171

IN THE

Supreme Court of the United States

GALESBURG COMMUNITY UNIT
SCHOOL DISTRICT NO. 205,

Petitioner,

v.

N.T. AND P.T., INDIVIDUALLY AND AS PARENTS
AND NEXT FRIENDS OF C.T.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, in an Individuals with Disabilities Education Act case, the Seventh Circuit erred when it affirmed the district court's application of the long-settled "due weight" standard from *Board of Education v. Rowley*, 458 U.S. 176, 206 (1982), as further explained by *Alex R. ex rel. Beth R. v. Forrestville Valley Community Unit School District No. 221,* 375 F.3d 603 (7th Cir. 2004), in a case where the petitioner school district failed to object to the admission of evidence considered by the district court and waived any argument about the applicable due weight standard by asking the courts below to apply *Alex R.*.

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INTRODUCTION

In this case, the district court applied settled legal standards to the record before it and concluded that petitioner school district violated the Individuals with Disabilities Education Act (IDEA) when it tried to send seven-year-old C.T. to a segregated school 45 minutes away, rather than let him stay in his local school with his general education peers and additional supports.

The legal issues are not new. The IDEA provides for the district court to take "additional evidence." 20 U.S.C. § 1415(i)(2)(C). This is not the traditional review of an administrative decision for substantial evidence on a closed record. Under the IDEA and *Rowley,* the district court must make an independent decision based on the "preponderance of the evidence" with "due weight" to the administrative record in light of the particular issues and facts before the court. *Id.*; *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205 (1982).

Petitioner has waived or forfeited the issues it asks this Court to decide. Petitioner waived the question about deference, Pet. at i, because it never disputed the legal standard below. Until now, both Parties litigated the case entirely as a specific application of the *Rowley* due weight standard as articulated in *Alex R. ex rel. Beth R. v. Forrestville Valley Community Unit School District No. 221* (*Alex R.*), 375 F.3d 603 (7th Cir. 2004). Below petitioner argued the court should apply *Alex R.*, and petitioner did not dispute the standard itself. Any question of the appropriate standard has been waived or forfeited.

Petitioner also waived any question presented about the district court "receiving evidence of events occurring after" the hearing officer's decision. Pet. at i; Pet. App. 18a n.2 (noting that petitioner generally did not challenge the district court's "decisions about admitting evidence" and that the one challenge petitioner did raise was "waived"). Petitioner itself offered and asked the district court to rely on extensive evidence post-dating the administrative proceedings.

Petitioner waived any arguments about the least restrictive environment ("LRE" or inclusion) requirement of the IDEA. Pet. at 32–34; 20 U.S.C. § 1412(a)(5)(A). The question presented does not include anything related to the LRE standard, and petitioner rightly concedes that the outcome on the ultimate question of whether petitioner violated the LRE requirement would not have been different in any of the other Courts of Appeals. Pet. at 36.

Further, if the Court were to consider a question about due weight, the outcome here would not be different under any of the cases that petitioner identifies. Even petitioner's suggested "inconsistency" between Courts of Appeals is illusory. Pet. at 18. None of the cases cited by the Petition include so much as a dissent or concurrence on due weight, let alone name any conflict between the Circuits, which for decades have used generally the same flexible considerations for due weight that stem directly from the IDEA and *Rowley*.

Petitioner is grasping for a do-over on the merits, after its deliberate litigation choices and the unusual factual and procedural circumstances did not yield the result it sought. The petition should be denied.

STATEMENT OF THE CASE

Legal Background

When there is a dispute between a school and parents over whether the special education services provided by the school violate the IDEA, the parties can bring that dispute to an administrative hearing. 20 U.S.C. § 1415(f).

After an administrative hearing, the party who did not prevail can bring the dispute to the district court. By statute, the district court "shall receive the records of the administrative proceeding" and take "additional evidence at the request of a party." 20 U.S.C. § 1415(i)(2)(C). With the passage of time, such "additional evidence" may come, for example, from "gaps in the administrative transcript . . ., unavailability of a witness, an improper exclusion of evidence by the administrative agency, and evidence concerning relevant events occurring subsequent to the administrative hearing." *Town of Burlington v. Dep't of Educ. for Com. of Mass.*, 736 F.2d 773, 790 (1st Cir. 1984), *aff'd sub nom.* 471 U.S. 359 (1985).

"[T]he district court independently evaluates the witnesses and evidence." Pet. 11 (citing *Rowley*, 458 U.S. at 205); Pet. App. 4a (same). Based on the full record, the district court makes a decision by "the preponderance of the evidence" whether the IDEA was violated. 20 U.S.C. § 1415(i)(2)(C). In this review, the district court gives "due weight" to the administrative record. *Rowley*, 458 U.S. at 206 (rejecting a "substantial evidence" standard of review).

Under the due weight standard—as further explained by the Seventh Circuit two decades ago—while courts do not defer on legal issues, they give "due weight" on factual issues that "varies from case to case" depending on the issues and importance of additional evidence, if any. *Alex R.,* 375 F.3d at 611-12. Where the district court receives "significant" and "important" additional evidence, the "more that the district court relies on new evidence, however, the less it should defer to the administrative decision." *Id.* at 613-14. Even in the unusual instances that additional evidence is received, it cannot turn the district court proceeding into "a trial de novo." *Id.* at 612. Always, district courts cannot "substitute their own notions of sound educational policy for those of the school authorities which they review." *Rowley*, 458 U.S. at 206; *Alex R.,* 375 F.3d at 614.

Factual Background

At the time of the events at issue, C.T. was a first-grade student of petitioner Galesburg Community Unit School District 205. Pet. App. 5a. After conducting an evaluation, petitioner found C.T. eligible for special education services based on his attention deficit hyperactivity disorder and related attention and behavioral challenges. *Id.* at 5a-6a. C.T. attended his local school, Silas Willard Elementary, a few blocks from his house. *Id.* C.T. had just started in a small classroom for behavior support (the "EBD" classroom). *Id.* C.T. had typical needs for that classroom, and C.T.'s teacher testified that his "physical aggression is not fundamentally different from his peers." *Id.* at 27a. At that point, petitioner had only attempted special education services with C.T. for about three weeks and had not provided him with supports such as a 1:1 paraprofessional

(which petitioner does provide to other students). *Id.* at 6a. Instead of providing C.T. supports that were available at his local school, petitioner proposed an IEP that would send C.T. 45 minutes away to a segregated school exclusively for children with disabilities called High Road Peoria with no access to general education peers. *Id.* at 6a–7a, 25a.

C.T.'s parents challenged petitioner's decision on the grounds that it violated the inclusion requirements of the IDEA. 20 U.S.C. § 1412(a)(5)(A) (requiring students to be educated in the least restrictive environment, that is, with non-disabled students "[t]o the maximum extent appropriate"); Pet. App. 8a.

C.T.'s parents knew the decision was wrong: his mother is a licensed clinical social worker and a former school board member of petitioner, actively engaged with C.T.'s education. They sought additional supports for C.T. in the EBD classroom at Silas Willard Elementary, including additional specialized behavior support, occupational therapy, and a 1:1 paraprofessional. Pet. App. 56a. They argued that C.T. was learning and could learn at Silas Willard Elementary School with appropriate additional supports, and thus that the IDEA did not allow petitioner to send C.T. to a more restrictive segregated setting at High Road Peoria. After trying to resolve the dispute at mediation, petitioner and C.T. completed an administrative hearing; the hearing officer ruled for the petitioner. Pet. App. 7a-8a.

District Court Proceedings

As provided by the IDEA, C.T.'s parents then filed suit in the United States District Court for the Central District of Illinois. Pet. App. 8a. Initially, in the district court the petitioner took the unusual and aggressive step of seeking a temporary restraining order to try to force C.T. to High Road Peoria immediately. Dist. Ct. Doc. No. 6 (seeking a "*Honig* injunction" to modify the statutory "stay put" injunction that requires C.T. to remain in his school placement during the dispute, which requires an extraordinary factual showing by the school). The TRO hearing ended when petitioner withdrew the TRO motion after the first witness. Dist. Ct. Doc. Nos. 20-21.

Instead, with the agreement of petitioner, the case quickly proceeded to an evidentiary hearing and resolution of the merits. Dist. Ct. Doc. No. 20. Petitioner did not challenge the governing legal standards—the IDEA and *Alex R.*—and even submitted them as controlling law to the district court. *See* Dist. Ct. Doc. No. 28 at 4 (petitioner's pre-hearing trial memo arguing the district court should apply *Rowley* and *Alex R.*); Dist. Ct. Doc. No. 36 at 4 (post-hearing memorandum, same). Petitioner did not dispute that the hearing would include additional evidence, including specifically evidence that post-dated the administrative proceedings. *See*, *e.g.*, Dist. Ct. Doc. No. 34 at 10; *id.* at 125:4-8 (sustaining petitioner's argument that the hearing was only "about August 10th to the present").

Petitioner itself offered new and additional evidence post-dating the administrative hearing about C.T.'s behaviors and performance, the actual operation of the

EBD classroom, and testimony from C.T.'s teachers and a district administrator. Pet. App. 8a-9a, 25a-27a. Petitioner did not object to data from the school itself that C.T. was making appropriate progress. *Id.*

As required by the IDEA, the district court reviewed the administrative record along with the evidence submitted by both Parties and concluded that the placement at High Road Peoria school violated C.T.'s right under the IDEA to learn in the least restrictive environment. Pet. App. 48a. The district court ordered petitioner to keep C.T. at his local school in the EBD classroom with a 1:1 paraprofessional, and to convene an IEP meeting to determine what other supports C.T. needed to learn. *Id.* (declining to prescribe to the school the exact supports or methods).

This proceeding from IEP meeting to district court decision was efficient: It took about one year from December 2023 to December 2024. Petitioner could have implemented the district court order in December 2024 and then returned C.T.'s education entirely to the school IEP team and parents. It chose not to. Instead, petitioner has continued appeals for two years and counting.

Court of Appeals Proceedings

Petitioner appealed to the Seventh Circuit. Both Parties argued the appeal as an *application* of the *Rowley* due weight standard as articulated in *Alex R.* and existing Seventh Circuit cases to this particular record. App. Ct. Doc. No. 17 at 17 (petitioner applying the established *Alex R.* due weight standard); *id.* at 25 (applying the same settled standard from additional Seventh Circuit cases);

App. Ct. Doc. No. 27 at 6–9 (same on reply). Petitioner did not argue that the due weight standard as explained in *Alex R.* and other Seventh Circuit cases should be changed, conflicted with any other Court of Appeals, or was inconsistent with this Court's authority—only that it should be applied in this case. App. Ct. Doc. Nos. 17, 27.

On a careful review of the record and district court decision, the Seventh Circuit unanimously rejected petitioner's arguments and affirmed how the district court applied the due weight standard to this particular record. Pet. App. 14a-16a. The Seventh Circuit found no legal error in the application of due weight and *Alex R.*. *Id.* As in *Alex R.*, the district court had received "a significant amount of material evidence that the hearing officer had not considered" that was "very important," and so the court provided "less" deference. *Id.* 15a-16a. As in *Alex R.*, the district court "reviewed both the administrative record and the new evidence" to reach "a decision based on the preponderance of the evidence." *Id.* The court concluded that "the district court did not substitute its own views or fail to defer to professional educators," and found no clear error in how the district court weighed the evidence or the ultimate conclusion that petitioner violated the IDEA. *Id.* at 28a-29a.

The Seventh Circuit also concluded that petitioner had waived any objection to the admission or consideration of the evidence by the district court because it had failed to object at that time. *Id.* 18a n.2 (noting that petitioner did not challenge the district court's "decisions about admitting evidence" and that the one Rule 702 challenge petitioner did raise was "waived").

REASONS FOR DENYING THE PETITION

A. The Petitioner Waived Any Challenge to the Due Weight Standard of *Rowley* as Articulated By the Seventh Circuit in *Alex R.*.

Petitioner did not make or preserve below any argument about the Seventh Circuit's established application of the due weight standard from *Rowley*. Any challenge to that standard has been waived or forfeited.

Petitioner did not challenge the due weight standard below. Both Parties litigated the case in the district court and on appeal as an application of the existing due weight standard. Petitioner asked the court to apply *Alex R.*. App. Ct. Doc. No. 17 at 17 (petitioner arguing the established *Alex R.* due weight standard); *id.* at 25 (applying the same settled standard from Seventh Circuit cases); App. Ct. Doc. No. 27 at 20-21 (arguing the same existing Seventh Circuit law on reply); Dist. Ct. Doc. No. 28 at 4 (pre-hearing district court memo applying the same standard); Dist. Ct. Doc. No. 36 at 4 (post-hearing memorandum, same). While the Parties disputed the *application* of the standard to this record, no one argued that the standard should be different or changed.

For example, below, petitioner did not object to or even criticize the so-called "sliding scale" approach that recognizes that the record and any additional evidence will vary from case to case. Pet. at 26. Petitioner did not argue for a "clear error by the hearing officer" standard of review, Pet. at 26, which would have been contrary to statute and this Court's existing authority. *See Rowley*, 458 U.S. at 205 (rejecting the "substantial evidence"

standard). Petitioner did not argue for any change in the settled Seventh Circuit approach or claim that the application of due weight as explained by the Seventh Circuit conflicts with any decision of this Court. Petitioner did not argue that the standard was flawed, has led to excessive litigation, or undermines the statute (not below or here). Petitioner did not argue that it conflicts with other Courts of Appeals or that it should be revisited.

Under well-established principles, it is too late for petitioner to challenge for the first time in this Court the standard it asked the lower courts to apply. "Absent unusual circumstances—none of which is present here—[the Court] will not entertain arguments not made below." *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 38 (2015); *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 173 (2016) ("The Department failed to raise this argument in the courts below, and we normally decline to entertain such forfeited arguments."). Petitioner has waived or forfeited any argument that the Seventh Circuit explanation of "due weight" should be changed or that this Court should adopt the language of some other Court of Appeals.

B. The Petitioner Waived Any Challenge to the Content, Scope, or Amount of Evidence Received and Considered by the District Court.

Petitioner also waived the question presented by failing to object or make any argument below about the district court "receiving evidence." Pet. at i. The Court's "traditional rule. . . precludes a grant of certiorari" when "the question presented was not pressed or passed upon below." *United States v. Williams*, 504 U.S. 36, 41 (1992)

(citation omitted); *Glover v. United States*, 531 U.S. 198, 205 (2001) (same).

Even with discussion of deference, petitioner actually disputes and asks this Court to review the scope of evidence considered by the district court: the question proposed is the impact of the district court "receiving evidence of events occurring after the fact" of the administrative proceedings. Pet. at i. Petitioner now, for the first time, argues that the IDEA "should" not "provide for the introduction of new, post-due process hearing evidence." Pet. at 18; Pet. at 25-26 (discussing a dispute over the "nature and amount" of additional evidence). Petitioner even raises the false specter of "a second evidentiary proceeding . . . as of right." Pet. at 7. These are questions of the scope of the additional evidence, and petitioner provides no basis to forecast expansive hearings and no evidence of excessive litigation in district courts, in the Seventh Circuit under *Alex R.* or generally.

Petitioner waived or forfeited all of these issues about the scope, content, or propriety of any evidentiary hearing, because it did not object in the district court. There is no question here of "secondary evidentiary proceeding" in the district court, or the extent or nature of additional evidence or hearings a district court should, or should not, conduct. There is no question because petitioner waived it by not objecting to the additional evidence below or raising any concern about the framework of the merits hearing the district court conducted. Just the opposite, the petitioner called its own witnesses—three of seven witnesses were school staff—to present its own testimony and documents with information that post-dated the administrative proceeding. Pet. at 30 ("the school district also admitted

additional evidence related to C.T.'s behaviors in the intervening months").

Indeed, by agreement, the hearing before the district court was limited to evidence that post-dated the administrative hearing. *See*, *e.g.*, Dist. Ct. Doc. No. 34 at 10; *id.* at 125:4-8. And petitioner's argument that "school officials did not have" the "opportunity" "to bring their expertise and judgment to bear" on the situation falls entirely flat because the petitioner was allowed to and did offer any and all witnesses and evidence that it proposed to the district court. Pet. at 29.

Again, on appeal below, petitioner waived any objection to the specific additional evidence admitted, the fact that the district court had an evidentiary hearing, or even the time period covered by the evidentiary hearing. Pet. App. 18a n.2 (noting that petitioner generally did not challenge the district court's "decisions about admitting evidence" and that the one challenge petitioner did raise was "waived"); App. Doc. No. 27 at 5 (arguing in reply below that "[t]he School District is not arguing that the District Court erred in admitting the additional evidence below"). Petitioner cannot now challenge the consideration of the additional evidence that it *agreed* the district court could consider or complain that the district court considered the additional evidence petitioner itself submitted.

While petitioner claims that the decisions below "permit" "a trial de novo" in the district court, Pet. at 4, the Seventh Circuit has long prohibited the district courts from conducting trials *de novo* after the administrative proceedings, and did so again in the decision below. Pet.

App. 18a. Even petitioner admits this is settled law. Pet. at 30. And petitioner cannot complain about judicial review in general, because Congress intended for parents and schools to have access to judicial review. 20 U.S.C. § 1415(i); *Rowley*, 458 U.S. at 206 (confirming courts review procedural and substantive disputes). Petitioner's argument about the scope of additional evidence in an IDEA review is neither correct, nor properly part of this appeal.

C. There is No Circuit Split Over the Due Weight Standard of *Rowley*.

Even if the issue had been preserved, the decision below does not reflect a true conflict among Courts of Appeals on the due weight standard, let alone one that would warrant review. While petitioner argues that the Seventh Circuit's articulation of the standard is in tension with that of other courts, the cases it cites illustrate no more than the expected fact that the exact framing of due weight varies from case to case as each child and situation varies in the particular issues, circumstances, posture, and record before the court.

First, petitioner does not argue that the outcome would be any different in any other Court of Appeals, or provide any basis to conclude that the various discussions of the due weight standard across Courts of Appeals would matter here. Pet. at 21-24.

Petitioner claims that the First Circuit and Second Circuit allow district courts *more* discretion to set aside administrative outcomes. Pet. at 21. Even if true, that would not change the outcome here, where petitioner complains the district court exercised too much discretion.

Petitioner quotes from Sixth Circuit decisions that discuss closer review of procedural disputes—which are not at issue—and language that emphasizes the expertise of schools. Pet. at 22. Yet recognition of school expertise neither differs between the Sixth and Seventh Circuits, nor would it change the outcome. The Seventh Circuit likewise recognizes educational expertise, which comes directly from the language of *Rowley* itself. Pet. App. 5a (directing courts not "'to substitute their own notions of sound educational policy for those of the school authorities which they review.' *Rowley*, 458 U.S. at 206"); Pet. App. 42a (district court explaining that due weight must account for courts' lack of educational expertise and specialized knowledge with deference to "professional educators"). This consideration was already part of the standard applied below.

The district court also provided an "explanation" for reaching a different outcome than the administrative process, as petitioner argues the Fourth Circuit and D.C. Circuit require. Pet. at 23; *e.g.* Pet. App. 15a-17a, 26a-27a (Seventh Cir. reviewing the evidence and reasoning of the district court).

Last, the Third Circuit emphasizes respect for witness credibility determinations and requires a "good reason" to deviate from such findings. Pet. at 23-24. Again, the district court provided this "good reason" in its discussion of the record. *E.g. Id.* And the Seventh Circuit likewise incorporates deference to the credibility assessment of fact finders who hear testimony. *E.g.* Pet. App. at 12a-13a, 15a-16a.

As discussed further below, all of these cases across the Courts of Appeals identify the same basic principles.

None of these cases—or even petitioner's gloss on them—suggest that this case for C.T. comes out differently in other Courts of Appeals.

Second, even the claimed inconsistency between Courts of Appeals is illusory. Pet. at 18. Just as the Court did not set a formula for determining the meaning of the IDEA's requirement for a Free Appropriate Public Education, *Rowley* designated the standard as "due weight," rather than *de novo*, clear error, or some other established standard. 458 U.S. at 205-06; *Cf. Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 403–04 (2017) ("It is in the nature of the [IDEA] and the standard we adopt to resist such an effort [to state a formula]: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created."). The due weight standard itself recognizes that Congress set up a particular system of review and that the weight given to any particular administrative record may vary by the issues, record, and circumstances involved.

The Courts of Appeals follow *Rowley* and likewise do not set a precise formula to define due weight. Petitioner highlights, for example, First and Second Circuit cases that recognize the judgement and discretion of the district court. Pet. at 21; *Town of Burlington v. Dep't of Educ. of Mass.*, 736 F.2d 773, 790-92 (1st Cir.1984), *aff'd*, 471 U.S. 359 (1985)[1] (recognizing the variety of circumstances that

1. There are two First Circuit decisions in *Town of Burlington v. Department of Education of Massachusetts*. Petitioner cites to an earlier decision in that case, 655 F.2d 428 (1st Cir. 1981), but appears to discuss the later decision about due weight, 736 F.2d 773 (1st Cir.1984). Pet. at 21. Respondents discuss the First Circuit decision from 1984.

provide discretion to the district court to admit and weigh evidence based on the situation presented by each case); *Reyes ex rel. R.P. v. New York City Dep't of Educ.*, 760 F.3d 211, 218 (2d Cir. 2014) (due weight varies based on the circumstances of the specific "administrative decision," including the decision itself, record, and witnesses).

Other circuits likewise recognize that discretion and deference will vary from case to case based on a variety of factors. *See, e.g.*, *S.H. v. State-Operated Sch. Dist. of City of Newark*, 336 F.3d 260, 270 (3d Cir. 2003) (recognizing that deference varies based on the record, including depending on the particular evidence presented in the district court); *Doyle v. Arlington Cnty. Sch. Bd.*, 953 F.2d 100, 105 (4th Cir. 1991) (deference depends on the type of evidence and procedures of the administrative hearing); *Burilovich v. Bd. of Educ. of Lincoln Consol. Schs.*, 208 F.3d 560, 565-67 (6th Cir. 2000) (deference varies based on the issues, types of disputes, record testimony, and circumstances); *Alex R.*, 375 F.3d at 612 (7th Cir. 2004) ("'due weight' varies from case to case"); *Kerkam v. McKenzie*, 862 F.2d 884, 887 (D.C. Cir. 1988) (declining to "try here to capture the appropriate deference in some formula").

Even variations in how the Courts of Appeals have articulated the *Rowley* standard in various cases do not create material differences in application. For example, even in the First and Second Circuits, with what petitioner calls "infinite discretion," Pet. at 21, both cases it cites reverse district courts to give greater deference to the administrative outcomes. *Town of Burlington*, 736 F.2d at 790-92, 802 (directing "due consideration" to the "state administrative proceedings," even with

additional evidence); *Reyes,* 760 F.3d at 218, 222 (reversing with instruction to "defer to the IHO's well-reasoned determination" on a record with no additional evidence).

Petitioner also highlights Sixth Circuit discussion of greater scrutiny of procedural issues and more deference on "substantive" education issues. Pet. at 22; *see Burilovich*, 208 F.3d at 565-66 (counseling more deference where "educational expertise is essential to the administrative findings," and affirming the district court's affirmance of the state administrative ruling for the school, in a case with no additional evidence). This is not some unique Sixth Circuit requirement; it comes directly from *Rowley*'s instruction for courts not to "substitute their own notions of sound educational policy." 458 U.S. at 206 (recognizing that courts review both substantive and procedural issues). Courts of Appeals consistently recognize these same principles, including the Seventh Circuit below. *E.g.* Pet. App. 5a ("the district court did not substitute its own views or fail to defer to professional educators"); *Town of Burlington,* 736 F.2d at 788, 794 (1st Cir. 1984) (also discussing review of procedural and substantive issues, and giving sufficient regard for "the administrative agency's expertise"); *Reyes*, 760 F.3d at 218 (2d Cir. 2014); *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 564 (3d Cir. 2010); *Doyle*, 953 F.2d at 105 (4th Cir. 1991) (naming the importance of reviewing procedural questions); *Kerkam*, 862 F.2d at 887, 888 n.4 (D.C. Cir. 1988) (reversing a district court and emphasizing both expertise and procedural concerns from *Rowley*).

Nor is there anything inconsistent about Courts of Appeals "requir[ing] an explanation" from the district court when it reaches a different outcome than

the administrative proceeding. Pet. at 23 (discussing *Doyle* from the Fourth Circuit, *Kerkam* from the D.C. Circuit, and *S.H.* from the Third Circuit, all of which reverse district court decisions that deviated from the administrative hearing officer results). While some cases use the *term* "*prima facie* correct," to describe the review of administrative findings, Courts of Appeals broadly require the same type of explanation for a district court to deviate from the administrative outcome. *See Town of Burlington,* 736 F.2d at 792 (1st Cir.1984) (admonishing the district court to "consider the findings [from the administrative proceeding] carefully and endeavor to respond to the hearing officer's resolution of each material issue"); *Gagliardo v. Arlington Cent. Sch. Dist.*, 489 F.3d 105, 113 (2d Cir. 2007) (emphasizing the need for specific, concrete information to deviate from administrative outcomes, and explaining that deference is "particularly warranted when the district court's decision is based solely on the administrative record"); Pet. App. 16a (affirming the district court that spent several pages reviewing evidence to explain the outcomes based on that record).

Petitioner lastly points to Third Circuit cases that name respect for fact finders who "heard live testimony" and made "credibility determinations." Pet. at 23-24 (quoting *Shore Regional High School Bd. of Educ. v. P.S.,* 381 F.3d 194, 197 (3d Cir. 2004) and *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 553 (3d Cir. 2010), neither of which involved additional evidence). The point about witnesses and credibility is standard, not unique to the Third Circuit, nor even the IDEA. *E.g. United States v. Oregon State Med. Soc'y,* 343 U.S. 326, 339 (1952) (quoting *Boyd v. Boyd,* 252 N.Y. 422, 429 (1930)) ("Face to face with living witnesses, the original trier of the

facts holds a position of advantage from which appellate judges are excluded"). Courts of Appeals agree that due weight in IDEA cases includes deference on testimony and credibility. *E.g. Town of Burlington,* 736 F.2d at 791 (1st Cir.1984) (cautioning against admitting additional evidence to review the "credibility of a witness" from the administrative proceeding); *Reyes*, 760 F.3d at 218 (2d Cir. 2014) (requiring deference based on "the administrative body's familiarity with the evidence and the witnesses"); *Doyle*, 953 F.2d at 104 (4th Cir. 1991) (requiring deference to "a trier of fact, who had the advantage of hearing the testimony, on the question of credibility"); Pet. App. 13a-14a (greater deference to fact finders who heard the testimony).

For decades—with some variation in articulation, but little substantive difference—courts have implemented the due weight requirement, in light of the particular administrative record, with respect for educational expertise, as required by *Rowley* more than forty years ago. The cases do not set conflicting standards for deference or how to deal with additional evidence; most did not even involve additional evidence. Indeed, none of the due weight discussions cited by petitioner even prompted a dissent or concurrence.[2] Petitioner does not present inconsistency or conflict for this Court to review.

2. *Crocker* is an exhaustion case, not about due weight, and the concurrence is on a different issue. *Crocker v. Tenn. Secondary Sch. Athletic Ass'n,* 873 F.2d 933 (6th Cir. 1989).

D. This Case Does Not Present Any Question About the LRE Standard.

With no material circuit split or question preserved on the due weight standard or evidence, petitioner tries to suggest there is some issue about the IDEA's "least restrictive environment" or "LRE" standard. Pet. at 32-34.

Petitioner waived any LRE issue because it is not included within the question presented. Pet. at i. "[T]he fact that petitioner discussed this issue in the text of his petition for certiorari does not bring it before us. Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review." *Wood v. Allen*, 558 U.S. 290, 304 (2010) (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 31, n. 5 (1993)).

Petitioner also rightly admits that any difference among the Courts of Appeals is not presented by this case because C.T. would have prevailed under any standard. Pet. at 36 ("Regardless of the LRE test applied, the outcome likely would not have changed . . . ").

Also, while petitioner now claims to prefer the Fifth Circuit articulation of the LRE standard, Pet. at 36, petitioner did not raise this question or dispute the Seventh Circuit's formulation of the LRE standard in the district court or even before the Seventh Circuit. For this reason, too, the issue was waived or forfeited. *Kingdomware Techs.*, 579 U.S. at 173.

Finally, petitioner's claim that this case "created a least restrictive environment standard that requires school administrators to exhaust all possible interventions," not only is waived but also has no basis in the actual decision below. Pet. at 31. The Seventh Circuit rejected the petitioner's argument explicitly and confirmed that "each case, like each student, is different." Pet. App. 27a (evaluating and rejecting the argument that the district court decision requires a school to "exhaust every possible measure" before changing placement).

E. The Seventh Circuit Reasonably Reviewed a Fact-Bound Weighing of Evidence and Credibility by the District Court.

At bottom, the petition reduces to a complaint that the district court reached the wrong outcome when it applied the longstanding IDEA requirements and due weight analysis to the particular circumstances of this case. That fact-bound contention does not warrant this Court's review. And that is particularly true because the Seventh Circuit was itself bound to apply a deferential standard of review: As the Seventh Circuit rightly recognized, this appeal "primarily entails factual work," where the district court considered evidence, "assesses the credibility and persuasiveness of the witnesses in person, [and] weighs the evidence on the full record." Pet. App. 12a-13a. Petitioner did not challenge the clear error standard of review in the Seventh Circuit, and no clear error existed below in the trial or appellate courts. Pet. App. 13a.

Further, on this record, the outcome below follows directly from the IDEA statute. The district court had no trouble finding a violation of the LRE requirement—

affirmed by the Seventh Circuit—where the school district tried to send a first-grade student with ADHD over 45 minutes away to a fully segregated school for children with disabilities in the initial IEP, after attempting special education services for less than three weeks. Pet. App. 2a. The district court found credible and persuasive evidence that C.T. was learning and could make appropriate progress with the additional supports petitioner could have—but had not—tried in the IEP, including a 1:1 paraprofessional. Pet. App. 48a. For example, the district court record included evidence that "C.T. made 'significant progress' and formed 'positive relationships.' . . . By March 2024 C.T. had reached a behavior goal in his IEP that he was not expected to reach until December 2024 . . . C.T.'s math and reading standardized test scores improved dramatically . . . his private counselor testified to improving emotional regulation." Pet. App. 26a. Since C.T. could learn at Silas Willard Elementary, the IDEA guarantees him the right to do so. 20 U.S.C. § 1412(a)(5)(A). The Seventh Circuit reviewed the district court decision and record at length. After their "careful review of the record, [they found] no clear error and thus do not reverse." Pet. App. 28a. This Court should not review or disturb that outcome.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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