

Hispanics Educators for Rewarding Opportunities
And Parents of Minor Guerrero

Petitioners,

v.

Board of Admissions of Columbiana University Prep School

Respondent.

Columbiana University Prep School (CUPS) is a “choice” school located in Chesapiq, Columbiana’s largest city. It serves students from preschool through grade 12. Although the school is administered by a not-for-profit corporation, the school is fully funded by the city. CUPS was originally chartered in 1999 and intended to be a bold experiment in education. The goal, as stated repeatedly in speeches and school marketing brochures, was to create a “vibrant” public school setting that represented Columbiana’s “diverse” population while maintaining the “highest” of educational standards. The stated goal of the school and the City of Chesapiq was to ensure that 100% of CUPS students graduated and that 95% of students gained admission rate to a top twenty university. By many accounts, the experiment has been a success. Some of Columbiana’s most prestigious residents – including doctors, lawyers, judges, and business leaders – have attended CUPS.

As a choice school, admissions (and ongoing matriculation) are rigorously monitored. IQ tests and other intelligence tests are administered to all preschool applicants and all CUPS students are tested each and every year. The tests, results, and criteria for successful admission to CUPS are closely guarded by the institution; however, it is widely accepted that the results of these tests are a major factor in decisions regarding preschool admission. (See Aaron Y. Tang, Privileges and Immunities, Public Education, and the Case for Public School Choice, 2001, The George Washington Law Review; <http://ssrn.com/abstract=1890929> for additional information on the wide discretion for admissions given to choice schools.)

CUPS is not without its critics however. Some argue that the school is too demanding and that its stated goals are mutually exclusive. Parents whose children are not admitted have publicly and vehemently criticized the school. Exacerbating their frustrations is the fact that competition for admission is so intense that only 5% of applicants receive a spot. Further exasperating the frustration is that after preschool admission decisions are made, a student can only secure a spot if the school loses a matriculated student. After preschool, these open spots are very few save for unavoidable family relocation (though some families opt to split their family before removing their child from CUPS) or expulsion for behavioral reasons. (As the school has complete discretion for expulsion, most parents instill continuous fear in their offspring to not lose their coveted spot in the institution.)

CUPS maintains an on-going wait list for potential new students. It is widely believed that the wait list is chronologically based (i.e. names that have been on the list the longest are granted admission first). CUPS has neither confirmed nor denied this however.

In 2020, after a child was dismissed from the school for threatening violence, a rare spot opened in one of the three eighth grade classrooms. Timothy Kingfisher, a member of the Chesapiquot tribe was offered the spot. Upon hearing the news, the parents of Ximena Guerrero were outraged. Due to the timing of the Kingfisher's move to Columbia, Mr. and Mrs. Guerrero knew their child had been placed on the wait list prior to Timothy.

The parents met with Lilliana Diaz, Principal of the school and voiced their dismay that their child had not been chosen for the open spot. They accused CUPS of engaging in unconstitutional racial decision-making and accused the school of denying their daughter's application because she was Hispanic.

Ms. Diaz refused to discuss how admission offers were ultimately determined saying only that the school engages in "holistic" review of all candidates. She denied that the school employed any kind of racial "quotas." She pointed out that CUPS works closely with Hispanic Educators for Rewarding Opportunities ("HERO"), an organization highly respected throughout Columbia for its success in expanding educational opportunities, raising testing scores, and increasing college enrollments for Columbian children of Central and South American descent. She also noted that the school had a large percentage of students from (or with ancestry from) Central and South America. According to school data, although Latinos/Latinas make up only 3.6% of CUPS' target population, the group comprises over 21% of the CUPS student body. (The school boasts that almost 40% of its student body is comprised of minority students.)

With the return of the Chesapiquot to Columbian in the 1960s and the succeeding decades, CUPS adopted policies including outreach efforts and scholarships to promote educational opportunities for Native Americans. According to the school data noted above, the Chesapiquot make up 9.1% of CUPS' target population but only 2% of the CUPS school enrollment.

After meeting with the Principal and feeling their concerns had not been adequately addressed, the Guerreros contacted HERO and filed suit in the federal district court in Columbian. After extensive hearings, both parties moved for summary judgment. The district court granted CUPS' motion concluding that plaintiffs had failed to demonstrate that the "holistic" review improperly considered race.

HERO appealed and the Court of Appeals for the Thirteenth Circuit upheld the district court. In a 2-1 decision, the court stated:

The Supreme Court has held that race may be a 'factor of a factor' in making school admission decisions. The Court has further made clear that schools may not adopt 'quotas' for school populations. The fact that a group is over-represented or underrepresented based on population is irrelevant to our constitutional analysis.

In a scathing dissent, Justice Zachsby Cohen accused the majority of ignoring relevant precedent and promoting racial division. Justice Cohen (with a nod to Chief Justice Roberts) argued that the way to end discrimination is to stop discriminating. He acidly complained:

It strains credulity to the breaking point to suggest as CUPS does that it is engaged in non-race based holistic review. In this case, it is clear to me that race was 'the' factor in CUPS enrollment determination, a decision that is deeply offensive to the Constitution.

CUPS has filed a writ of certiorari and that writ has been granted. The Court has asked the parties to address the following question:

Do CUPS admission practices on their face or as applied violated the Equal Protection Clause of the Fourteenth Amendment?