IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHENITHA COMB; SHERITA SIMS-COTTON; MINNIE ENGLISH; PATRICIA NEAL; TRACEY EADEN; LAKEISHA PARKER; NAOMI FLEMMING; IRIS WILLIAMS; BEVERLY BASHIR; BRENDA WITHFIELD; KATHY BUTLER; and DEMETRIUS HAWKINS,	§	Civil Action No._____
Plaintiffs,	§	Jury Trial Requested
v.	§	
BENJI'S SPECIAL EDUCATIONAL ACADEMY, INC.; RON ROWELL, SUPERINTENDENT BENJI'S SPECIAL EDUCATIONAL ACADEMY, INC.; KAY CARR, MEMBER BOARD OF MANAGERS, BENJI'S SPECIAL EDUCATIONAL ACADEMY, INC.; JAMES HOLMAN, MEMBER BOARD OF MANAGERS BENJI'S SPECIAL EDUCATIONAL ACADEMY, INC.; EARNESTINE PATTERSON, MEMBER BOARD OF MANAGERS OF BENJI'S SPECIAL EDUCATIONAL ACADEMY, INC.; and ROBERT SCOTT, COMMISSIONER TEXAS EDUCATION AGENCY,	§	
Defendants.	§	

PLAINTIFFS' ORIGINAL VERIFIED COMPLAINT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

Plaintiffs file the following Complaint and Application for Temporary Restraining Order and Injunctive Relief in accordance with 28 U.S.C. § 2201 and Rules 57 and 65 of the Federal Rules of Civil Procedure against the named Defendants, Ron Rowell, in his

official capacity as Superintendent of Benji's Special Education Academy, Inc.; Kay Carr, in her official capacity as member of the Board of Managers; James Holman, in his official capacity as member of the Board of Managers; Earnestine Patterson, in her official capacity as member of the Board of Managers; Robert Scott, in his official capacity as Commissioner of the Texas Education Agency for violation of due process and equal protection provisions of the IDEA, 20 U.S.C. § 1041 *et seq.,* and the due process and equal protection protections of the United States Constitution.

PARTIES

1. Plaintiff Shenitha Comb, is the mother and next-friend of a student at Benji's Special Educational Academy, and the aunt and next-friend/guardian of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

2. Plaintiff Sherita Sims-Cotton, is the mother and next-friend of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

3. Plaintiff Minnie English, is the grandmother and next-friend/guardian of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

4. Plaintiff Patricia Neal, is the mother and next-friend of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

5. Plaintiff Tracey Eaden, is the mother and next-friend of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

6. Plaintiff Lakeisha Parker, is the mother and next-friend of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

7. Plaintiff Naomi Flemming, is the mother and next-friend of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

8. Plaintiff Iris Williams, is the mother and next-friend of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

9. Plaintiff Beverly Bashir, is the mother and next-friend of two students at Benji's Special Educational Academy and a resident of Harris County, Texas.

10. Plaintiff Brenda Withfield, is the mother and next-friend of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

11. Plaintiff Kathy Butler, is the mother and next-friend of a student at Benji's Special Educational Academy and a resident of Harris County, Texas.

12. Plaintiff Brenda Demetrius Hawkins, is the aunt and next-friend/guardian of a student at Benji's Special Educational Academy and a resident of Harris County, Texas

13. Plaintiffs are all parents, grandparents, next-friends or guardians of students receiving education under the IDEA through the local education agency Benji's Special Educational Academy, Inc.

14. Defendant Benji's Special Educational Academy, Inc. is an open-enrollment charter school operating in Houston, Texas, under contract with the State of Texas. It may be served with process through its superintendent, Ron Rowell, at 2903 Jensen Drive, Houston, Texas 77026.

15. Defendant Ron Rowell is the Superintendent of Benji's Special Education Academy, Inc. Rowell is sued in his official capacity. He may be served in his official capacity with process at Benji's Special Educational Academy, Inc., 2903 Jensen Drive, Houston, Texas 77026.

16. Defendant Kay Karr, is a member of the Board of Managers of Benji's Special Educational Academy, Inc. Karr is sued in her official capacity. She may be served in

her official capacity with process at Benji's Special Educational Academy, Inc., 2903 Jensen Drive, Houston, Texas 77026.

17. Defendant James Holman, is a member of the Board of Managers of Benji's Special Educational Academy, Inc. Holman is sued in his official capacity. He may be served in his official capacity with process at Benji's Special Educational Academy, Inc., 2903 Jensen Drive, Houston, Texas 77026.

18. Defendant Earnestine Patterson, is a member of the Board of Managers of Benji's Special Educational Academy, Inc. Patterson is sued in her official capacity. She may be served in her official capacity with process at Benji's Special Educational Academy, Inc., 2903 Jensen Drive, Houston, Texas 77026.

19. Defendant Robert Scott, is Commissioner of the Texas Education Agency. Scott is sued in his official capacity. He may be served in his official capacity with process at the Texas Education Agency, 1701 North Congress Ave., Austin, Texas 78701-1494.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

21. Venue is proper in this District pursuant to 28 U.S.C. § 1381.

GENERAL ALLEGATIONS

A. INTRODUCTION

22. Benji's Special Educational Academy, Inc. ("Benji's") was granted an open enrollment charter by the Texas Education Agency ("TEA") on November 2, 1998.

23. By the terms of the original charter, the charter expired on July 31, 2003. Benji's timely applied for renewal of the charter, and the application has been pending since that time, while Benji's has been allowed to continue operations by the TEA.

24. Benji's currently serves over 500 students, grades pre-k to 12, in Houston's Fifth Ward, a historically impoverished area of town. Several of those students have educational disabilities, and nearly all the students could be classified as "at-risk" or having behavioral problems.

25. On September 3, 2010, the TEA appointed a Board of Managers to act as the governing body of Benji's. Defendants Kerr, Holman and Patterson were assigned as managers by TEA Commissioner Robert Scott. Rick Schneider was appointed as superintendent of Benji's at that same time.

26. The former board of directors, including Theaola Robinson, Benji's founder, CEO, and superintendent were removed from their positions.

27. On September 13, 2010, the TEA appointed interim Board of Managers voted unanimously to cease operation of the school as of the close of business, September 14, 2010 (the "Suspension").

28. This Board of Managers action was taken without the input of parents, after an open meeting notice which was vague.

29. On September 14, 2010, Rich Schneider resigned as superintendent of Benji's and TEA Commissioner Scott replaced him with Ron Rowell.

30. From September 14, 2010 through today, the faculty, staff and students of Benji's have engaged in peaceful civil disobedience of the Board of Manager's decision to suspend operation of the school by returning each school day to teach and learn respectively.

31. The TEA Commissioner has deemed this civil disobedience a danger to the health, safety, and welfare of the students of Benji's, and instructed proceedings under § 12.1162(b) of the Texas Education Code on the strength of this claimed danger.

32. On September 24, 2010, the TEA Commissioner provided formal notice of intent to revoke the charter of Benji's Special Education Academy, triggering the right of Benji's Special Education Academy to effect a public hearing on the matter in accordance with Texas Education Code § 12.116(b), which specifically requires a public hearing for parents and the charter holder.

33. The Board of Managers has called a meeting for September 27, 2010 at 6:30 p.m. to act on the TEA commissioner's decision. However, without even waiting for that meeting the Board of Managers has acted and disseminated the attached notice to parents, students and staff. (Exhibit 1).

34. "While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting rile in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law."

35. "Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways."

36. The purpose of the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA") is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment,

and independent living, and to ensure that the rights of children with disabilities and parents of such children are protected.

37. A child with a disability means a child with mental retardation, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who by reason thereof, needs special education and related services. IDEIA § 602(3).

38. Plaintiffs are parents of students that fall within the definition of a child with a disability under the IDEIA.

B. IMPOSITION OF THE SUSPENSION IS ARBITRARY AND CAPRICIOUS

39. The decision of the Board of Managers to suspend operation of Benji's prior to a full hearing by the TEA is arbitrary and capricious and violates the Texas Educational Code and the regulations promulgated thereunder.

C. THE SUSPENSION WILL IRREPARABLY HARM PLAINTIFFS

40. Suspension of school activities in the middle of the school year without adequate notice to parents and without their statutory and constitutional right to a hearing, will irreparably harm Plaintiffs and other similarly situated students.

D. THE SUSPENSION VIOLATES THE LAW AND IS ARBITRARY AND CAPRICIOUS AND THE SUSPENSION VIOLATES PLAINTIFFS' STATUTORY AND CONSTITUTIONAL RIGHTS

41. The purpose of the IDEA is to insure that the rights of children with disabilities and parents of such children are protected. 20 U.S.C. § 1400(d)(1)(b).

42. The Suspension violates the rights of Plaintiffs under the IDEA.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

43. If Defendants are not immediately restrained from enforcing the Suspension, Plaintiffs will continue to suffer imminent and irreparable injury for which there is no adequate remedy at law. Despite Plaintiffs' entreaties, Defendants have not even waited for the meeting but have acted at 3:30 p.m. by sending a letter to parents, children and staff regarding the Suspension. (Exhibit 1). Simply put, the damage that can be reasonably expected as a result of the Suspension will see the students and staff of Benji's disperse and may never be re-comprised. Over a hundred individuals could lose their jobs. Hundreds of children will be displaced in the middle of the school year, subjected to the rigors of adjusting to a new school, new teachers, and testing. Thus, the impact of the Suspension will be felt not only by Plaintiffs but by hundreds of families in Houston's already economically challenged Fifth Ward. A monetary award to Plaintiffs won't bring those education jobs back to Benji's or bring that educational community back to life, and the potential damage done to the emotional and educational health and welfare of the students is beyond measure. IDEA parents are simply told of alternative facilities, some of which may have already failed their children.

44. There is a substantial likelihood that Plaintiffs will prevail on the merits. As notes above at great length, the nature of Defendants' actions were arbitrary, capricious, an abuse of discretion, and a result of a process ignoring proper procedure.

45. The threatened harm to Plaintiffs outweighs the harm that a temporary retraining order would inflict on Defendants, Plaintiffs have a right to have the due process procedures of the Texas Education Code and the IDEA. To punish Plaintiffs – and indeed, all the other students and school staff that have attempted to resist the State's

unlawful action particularly in such an arbitrary manner, significantly outweighs any harm to Defendants.

46. Issuance of a temporary restraining order would not adversely affect the public interest or pubic policy. Quite the opposite. Hundreds of Houston children who will find themselves without a school as a result of Defendants' Suspension would benefit significantly from the lifting of this arbitrary and capricious suspension.

47. Plaintiffs are willing to post a bond in the amount the Court deems appropriate.

48. Plaintiffs ask the Court to issue a temporary retraining order preventing Defendants from enforcing the Suspension, and asks the Court to set Plaintiffs' request for a preliminary injunction for a hearing at the earliest possible time.

REQUEST FOR INJUNCTIVE AND DECLARATORY RELIEF

49. Plaintiffs apply for and move this Court under Rule 65 of the Federal Rules of Civil Procedure to issue a Preliminary Injunction and thereafter a Permanent Injunction enjoining the Suspension. Plaintiffs seek a temporary and permanent injunction against Defendants' continued violation of Plaintiffs' constitutional rights.

50. If maintained, the Suspension would result in intentional and unwarranted interference with Plaintiffs' existing schooling in violation of the IDEA. Therefore, Plaintiffs request a declaratory judgment that the Suspension is invalid and unenforceable pursuant to IDEA and FRCP 57.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court order the following relief preliminarily, and after a full trial on the merits, permanently:

1. Declare the Suspension invalid and unenforceable;

2. Declare that Defendants have violated and continue to violate the IDEA;
3. Immediately, temporarily and permanently enjoin and restrain Defendants from enforcing the Suspension and ordering them to rescind the Suspension and the attached notice of suspension of operations for Benji's Special Educational Academy; and,
4. Grant Plaintiffs such further relief as the Court deems just, proper, and equitable.

Respectfully submitted,

/s/ Berry Dunbar Bowen_____
Berry Dunbar Bowen
Fed ID No.: 6177
State Bar No.: 02721050
3014 Brazos Street
Houston, TX 77006
(713) 521-3525 (voice)
(713) 521-3575 (fax)
berrybowen@comcast.net
ATTORNEY IN CHARGE FOR PLAINTIFFS

Of Counsel:

Robert A. Jones, Esq.
State Bar No.: 10941500
2211 Norfolk Street, Suite 600
Houston, TX 77098
(713) 526-1171 (voice)
(713) 528-3415 (fax)

VERIFICATION

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 27, 2010.

/s/ Berry Dunbar Bowen_____
Berry Dunbar Bowen

September 27, 2010

SUBJECT: SUSPENSION OF OPERATIONS FOR BENJI'S SPECIAL EDUCATIONAL ACADEMY CHARTER SCHOOL

Dear Parents:

The Board of Managers of the Benji's Special Educational Academy Charter School voted on Monday evening, September 13, 2010, to suspend the operations of the school effective at close of business on Tuesday, September 14, 2010. This decision was made based on the information provided to the Board of Managers that the school had a critical cash flow problem and would not be able to meet its current financial obligations. However, representatives of the former school administration continued to operate the school after the order by the Board of Managers, and the Commissioner of Education was required to take action to address the related health, safety, and welfare concerns for students. The Commissioner of Education held a hearing on September 22, 2010 with charter school officials and representatives, and the result of that hearing was a final Order from the Office of the Commissioner to SUSPEND CHARTER OPERATIONS AND FUNDS for Benji's Special Educational Academy. The commissioner's decision was based on evidence that conditions at the school present a danger to the health, safety, or welfare of the students.

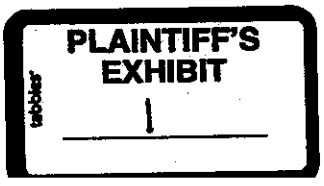
The operations of Benji's Special Educational Academy are suspended. Please contact an available charter school or a local school district to enroll your child(ren) in school as soon as possible. Attached to this letter is contact information for local districts and charter schools. Phone numbers for several local independent school districts (ISDs) are as follows:

- Houston ISD – High School (9-12) 713-556-7143; Middle School (6-8) 713-556-7102; Elementary School (PK-5) 713-556-7100
- Aldine ISD – 281-985-6218
- North Forest ISD – (713) 491-1017

Please ensure that your child is enrolled in school as soon as possible. You may pick-up your child's school records at the Region 4 Education Service Center (ESC) beginning on Wednesday, September 29, 2010. You may contact the Region 4 ESC at 713-462-7708 to request records. Region 4 ESC is located at 7145 West Tidwell, Houston, Texas 77092-2096.

Sincerely,

Ronald Rowell
Interim Superintendent



Charter Schools

Accelerated Intermediate Academy
12825 Summit Ridge Drive, Houston, TX 77085
713.728.9330

Amigos Por Vida-Friends For Life Public Charter School
5500 El Camino Del Rey, Houston, TX 77081
713.349.9945

Calvin Nelms Charter Schools
20625 Clay Road, Katy TX 77449
281.398.8031

Children First Academy of Houston
7803 Little York Road, Houston, TX 77016
713.491.5412

Draw Academy
3920 Stoney Brook Drive, Houston TX 77063
713.706.3729

George I Sanchez Charter
6001 Gulf B3, Houston, TX 77023
713.926.1112

Girls & Boys Preparatory Academy
8415 W. Bellfort, Houston, TX 77071
713. 270.5994
Houston Alternative Preparatory Charter School
12525 Fondren Road, Houston, TX 77081
713.721.6905

Houston Can Academy Charter School
3401 Hardy Street, Houston, TX
713.659.4226

Houston Can Academy Hobby
9020 Gulf Freeway, Houston, TX 77017
832-379.4226

Houston Gateway Academy, Inc. – Coral Campus
1020 Coral, Houston, TX 77012
713.923.5060

Houston Gateway Academy

3400 Evergreen Drive, Houston, TX 77087
713.649.2706

Houston Heights Charter School (High School)
1125 Lawrence, Houston, TX 77008
713.868.9797

Houston Heights Learning Academy Inc.
902 W. 8th Street, Houston, TX 77007
713.869.9453

Jamie's House Charter School
17406, Bamwood Rd, Houston, TX 77090
281.866.9777

Jamie's House Charter School (Joshua's Learning Land)
8320 W. Airport, Houston, TX 77071
713.773.1600

Juan B Galaviz Charter School
1507 Little York, Houston, TX 77093
832.300.6010

KIPP Southeast Houston (KIPP 3rd Ward School)
5500 Martin Luther King, Jr. Boulevard, Houston, TX 77021
713.842.1695

KIPP, North Forest Lower School
9636 Mesa Drive, Houston, TX 77078
713.633.4946

KIPP Legacy Preparatory School
9614 Mesa Drive, Houston, TX 77078
832.633.1813

Koinonia Community Learning Academy
3229-A Hadley, Houston, TX 77004
713.659.2552

La Amistad Love and Learning Academy
6600 Sanford Road, Houston, TX 77096
281.988.9201

La Amistad Love and Learning Academy
8515 Brookwulf Drive, Houston, TX 77072
281.498.2477

La Amistad Love and Learning Academy - Missouri City

7860 W Fuqua, Missouri City, TX 77489
281.988.9201

Mainland Preparatory Academy
319 Newman Road, La Marque, TX 77568
409.934.9100

Medical Center Charter School, Southwest
10420 Mullins, Houston, TX 77096
713.726.0221

Meyerpark Elementary
10912 S. Post Oak Road, Houston, TX 77035
713.729.9712

Northwest Preparatory
1305 Benson, Houston, TX 77020
713.672.1959

Northwest Preparatory
4705 Lyons, Houston, TX 77020
713.491.9220

The Odyssey Academy
6001 Stewart Road, Galveston, TX 77551
409.750.9289

Raul Yzaguirre School for Success
2950 Broadway, Houston, TX 77017
713.640.3784

The Rhodes School
12822 Robert E Lee Road, Houston, TX 77044
281.458.4334

Richard Milburn Academy (Suburban Houston)
713 E. Airtex Drive Building B, Houston, TX 77073
281.209.3505

Ripley House Charter School
6225 Northdale Street, Houston, TX 77087
713.669.5202

Southwest School (High School)
6400 W Freeway, Ste. S, Houston, TX 77074
713.954.9528

Southwest School (Middle School)

6400 S W Freeway, Ste. S Houston, TX 77074
713.954.9528

Southwest School (Elementary)
6400 SW Freeway, Ste. S Houston, TX 77074
713.988.5839

Southwest School (Mangum Elem. Campus)
4515 Mangum Road, Houston, TX 77092
713.688.0505

Two Dimensions Preparatory Academy
12121 Veterans Memorial Dr. #10, Houston, TX 77067
281.227.4700

Two Dimensions Preparatory Academy /Vickery
12330 Vickery, Houston, TX 77039
281.987.7300

Yes Prep Public Schools, Inc. (South)
6565 Demoss, Houston, TX 77074
713.967.9800

Zoe Learning Academy
6701 Cullen Blvd. Houston, TX 77021
713.661.9600

SCHOOL ENROLLMENT FAIR

WHAT: School Enrollment Fair for Benji's Special Educational Academy Students and Parents

WHERE: Harris County Department of Education Conference Center
6300 Irvington Blvd.
Houston, TX 77022-5799
Free parking—Please check in at the front desk for directions to the 5th floor meeting room

WHEN: 8:00 AM to 4:30 PM
Tuesday, September 28th and Wednesday, September 29th

Staff from Houston Independent School District (ISD), North Forest ISD, and Aldine ISD and representatives of local area charter schools will be on site at the Harris County Department of Education from 8:00 a.m. to 4:30 p.m. on Tuesday, September 28th and Wednesday, September 29th to provide enrollment information and support for students previously enrolled at Benji's Special Educational Academy Charter School. Please drop by to ask questions and visit with these representatives about the options you have for enrolling your child in a local public school.

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Defendants.	§	

TEMPORARY RESTRAINING ORDER

Plaintiffs' application for Temporary Restraining order is GRANTED. The Court finds that it clearly appears from specific facts shown by verified complaint that immediate and irreparable loss and damage will result unless the order is granted. Nichole Bunker-Henderson, Esq., assistant attorney general, representing Defendants, was furnished by e-mail a copy of the Complaint and was contacted by telephone before consideration of Plaintiff's application.

Applicants are parents or guardians of students whose education is in part supported by the federal government under the Individuals with Disabilities Education Improvement Act of 2004. This statute's purpose is to protect the rights of parents of children with disabilities. More than 70 IDEA students are enrolled at Benji's Special Educational Academy, Inc., a local education agency under the IDEA. Plaintiffs contend that the Texas Education Agency has set in motion a revocation of the charter of Benji's Special Educational Academy, Inc. and that as a predicate thereto applicable law requires that the Texas Education Commissioner "must provide an opportunity for a hearing the charter holder and to parents and guardians of the school." The Texas Education Agency only started the notice process by letter dated September 24, 2010, received by the charter holder September 27, 2010. The board of managers gave notice on September 24, 2010 of their intent to act at an open meeting on the Texas Education Agency decision without hearing and now have acted without even awaiting the open meeting. The IDEA provides the parents of disabled children with a means to protect their rights to continued education only to be interrupted in accordance with due process. Irreparable injury will follow if an institution which meets the needs is closed without such protections, particularly when expressly provided by state statute.

It is therefore, ORDERED that Defendants are hereby ordered to immediately refrain from all further efforts to cease operations of Benji's Special Educational Academy, Inc. and to continue to fund and operate the school until further order of the Court and to take all such reasonable steps to rescind the notice given to parents, students and staff that operations of the school have been terminated or suspended.

Issued at _____ p.m., on Monday, September 27, 2010.

SIGNED at Houston, Texas, this 27th September, 2010.

_____
UNITED STATES DISTRICT JUDGE