

# BETH MEDRASH GOVOHA

617 Sixth Street, Lakewood, NJ 08701



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## VIA FEDERAL EXPRESS

Secretary Brian K. Bridges  
Office of the Secretary of Higher Education  
1 John Fitch Plaza,  
10th Floor, PO Box 542,  
Trenton, NJ 08625-0542

**Re: Beth Medrash Govoha (Building Our Future Grants #006-01 and #006-02)**

Dear Secretary Bridges:

I am writing with regard to the two Building Our Future grants referenced above. Both grants were awarded to Beth Medrash Govoha in 2013, but neither was disbursed. The grants were to facilitate capital projects that were "shovel ready" in 2013, and required BMG to make substantial financial commitments toward those projects with donor or institutional funds.

It has now been almost a decade since the Building Our Future Bond Act was enacted into law on August 7, 2012. In the months that followed, as the State solicited participation from schools across New Jersey, BMG invested considerable time and effort in preparing its application for the funding, including securing substantial financial commitments of donor and institutional funds. BMG's application was reviewed and submitted to the New Jersey Legislature for approval in April 2013, alongside applications from 45 other institutions of higher education. BMG signed a grant agreement in June 2015.

Both grants were designed to address the space and program needs of BMG in 2013. It is now almost nine years later, and, in addition to the normal incremental cost increases that would be expected to accrue over such a long span of time, construction costs have recently soared dramatically due to a combination of Covid-era shortages, post-lockdown construction booms, and the higher levels of inflation the United States is experiencing.

As a result of all of these factors, the projects as budgeted for in the grant application are no longer economically feasible. Since the grant funds are a fixed sum, BMG would need to raise the additional funds to complete the buildings under current conditions, and this cost, coming on top of the required match which was already a considerable sum, would directly compete with other pressing needs that BMG must address.



Since submitting its application for these grants, BMG has initiated and completed construction of 70,000 square feet of alternative space in new buildings, which can be used to meet some of the need anticipated in the grant application. The changing nature of BMG's space needs combined with the prohibitive cost of proceeding with the grant funded projects render it impractical for BMG to continue to pursue this funding.

BMG has therefore elected not to continue to pursue these grants through this process, and is hereby withdrawing from the grant given the unconscionable delay caused by the litigation and the resultant cost increases which render the projects inadvisable and financially not feasible

Although BMG is no longer pursuing the grants, we do believe that it is appropriate to point out the process that lead to these long delays. The lawsuit filed by the American Civil Liberties Union of New Jersey – singling out BMG, the only Jewish school to apply for funding, from among ten similarly situated, religiously-affiliated institutions of higher education -- was the primary cause of the delay,

In May 2018, the New Jersey Supreme Court vacated an earlier decision of the Appellate Division that had enjoined the grants. The Supreme Court remanded to the Secretary of Higher Education for an administrative hearing to develop the record regarding how the grant funding would be put to use.

The matter languished for nearly a year, and was transmitted to the Office of Administrative Law only to be withdrawn when the Administrative Law Judge indicated that the State would be a party to the proceeding, and then later transmitted to a different Administrative Law Judge with a far broader scope than directed by the New Jersey Supreme Court.

This entire proceeding was unnecessary and should have been obviated in light of the United States Supreme Court's decisions in *Trinity Lutheran Church of Columbia v. Comer* in 2017 and *Espinoza v. Montana Dep't of Revenue* in 2020. In *Espinoza* the Supreme Court instructed that

A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.

In light of the *Espinoza* decision, BMG reached out to the Office of the Secretary of Higher Education to secure the release of the funds which brings us back to where we are now.

Ironically, as this letter is being written the United States Supreme Court is hearing argument in *Carson v. Makin*, a case that will hopefully put to rest the practice of too many States that discriminate against religiously-affiliated institutions by disqualifying them from generally-applicable grant programs solely because of their religious character.

BMG raises these issues not to vent its institutional frustration, but in the hope that it will help ensure that we be treated fairly in the future – a right guaranteed by the United States Constitution.

Sincerely,



Yitzchok Shrager Kotler  
Senior VP, Administration & Campus