#525

Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER)

Report to
the Mississippi Legislature

Mississippi's Compliance with the *Ayers* Settlement Agreement

In 1975, Jake Ayers, the father of a student at one of Mississippi's historically black universities, commenced a class action suit directed against the State of Mississippi and its university system. The suit alleged that the State of Mississippi operated a dual system of universities that discriminated on the basis of race and was thereby unconstitutional under the Equal Protection Clause of the United States Constitution. This litigation came to an end approximately thirty years later with the adoption of a Settlement Agreement that set out the state's duties with respect to the enhancement of programs and facilities at the three historically black institutions.

This report focuses on whether the state and its institutions of higher learning have complied with the terms of the Settlement Agreement and whether the state has provided resources for programs and infrastructure as set out in the Settlement Agreement. PEER found that:

- Regarding the Legislature's responsibility, because the plaintiffs' appeal was not dismissed until almost three years after the date on which the United States District Court entered final judgment in the matter, the Legislature's implementation of the *Ayers* settlement was delayed. Consequently, some funding has not been appropriated or distributed in accordance with the schedule set out in the agreement.

- Regarding the responsibility of the Board of Trustees of State Institutions of Higher Learning (IHL), IHL has implemented capital projects and educational programs in conformity with the Settlement Agreement.

- Interest from the public and private endowments has been distributed in accordance with the Settlement Agreement. PEER notes that the private endowment has not reached the amounts anticipated by the Settlement Agreement and thus has generated less interest than anticipated.

September 8, 2009

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

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The Mississippi Legislature

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September 8, 2009

Honorable Haley Barbour, Governor
Honorable Phil Bryant, Lieutenant Governor
Honorable Billy McCoy, Speaker of the House
Members of the Mississippi State Legislature

On September 8, the PEER Committee authorized release of the report entitled **Mississippi's Compliance with the *Ayers* Settlement Agreement**.

Harvey Moss

Representative Harvey Moss, Chair

This report does not recommend increased funding or additional staff.

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Mississippi's Compliance with the *Ayers* Settlement Agreement

Executive Summary

Introduction

In 1975, Jake Ayers, the father of a student at one of Mississippi's historically black universities, commenced a class action suit in the United States District Court for the Northern District of Mississippi. The suit was directed against the State of Mississippi and its university system alleging that Mississippi operated a dual system of universities that discriminated on the basis of race and was thereby unconstitutional under the Equal Protection Clause of the United States Constitution. This litigation came to an end approximately thirty years later with the adoption of a settlement agreement in the case of *Ayers v. Fordice*, *infra*. The Settlement Agreement set out the state's duties with respect to the enhancement of programs and facilities at the three historically black institutions.

The Settlement Agreement

On February 15, 2002, the United States' District Court for the Northern District of Mississippi entered final judgment approving a settlement between the *Ayers* plaintiffs and the State of Mississippi. In so acting, the court made note of the fact that the Settlement Agreement went beyond what the court considered would be necessary to provide a remedy for eliminating remnants of a dual, segregated system of higher education. However, the court noted that it is not illegal for the state to do more than is required by the Constitution. The settlement accomplished a full, complete, and final resolution of the plaintiffs' claims. All pending claims were to be dismissed upon the approval of the settlement. The private plaintiffs' appeal was dismissed on November 26, 2004.

The Settlement Agreement obligates the Legislature to fund:

- Summer Developmental Education Programs;

- academic programs;
- program enhancements,
- endowments; and,
- capital improvements.

The Board of Trustees of State Institutions of Higher Learning (IHL) and the individual institutions must implement programs and capital projects in accordance with the terms of the Settlement Agreement. The Settlement Agreement gives IHL and the institutions some flexibility in implementation.

Except for private contributions made in accordance with Section 4 of the Settlement Agreement (Private Endowments), all funds must come from either bond funds or appropriations from the Legislature.

Compliance with Terms of the Settlement Agreement

As the Settlement Agreement displaces the earlier decree of the court regarding the state's obligations to eliminate remnants of segregation in the university system, the settlement has the effect of law. IHL must make reports to the court on progress toward fulfillment of the terms of the settlement. In view of this, PEER treats the Settlement Agreement as the basis for determining whether the state has provided the programs, funding, and facilities mandated by the court.

The Settlement Agreement places burdens on both the Legislature to fund programs and upon the IHL Board to administer programs in accordance with the terms of the agreement.

Legislative Compliance with the *Ayers* Settlement

Because the plaintiffs' appeal was not dismissed until almost three years after the date on which the United States District Court entered final judgment in the matter, the Legislature's implementation of the *Ayers* settlement was delayed. Consequently, some funding has not been appropriated or distributed in accordance with the schedule set out in the agreement.

The *Ayers* settlement anticipated implementation in FY 2002 and established a multi-year schedule for funding of programs, endowments, and capital improvements. Because under the terms of the settlement implementation was not to begin until all appeals were dismissed and the plaintiff's appeal was not dismissed until November 26, 2004, the implementation of schedules for certain program payments was delayed.

The Legislature has complied with terms of the Settlement Agreement as follows:

- *The Settlement Agreement requirement for $75 million in bond financing for the capital projects has been provided.*

- *The Legislature has provided $2,500,000 in attorneys' fees as required by the settlement.*

- *Because the appeal was not dismissed until 2004, appropriations for the Summer Developmental Education Programs, new university programs and enhancements, and the public endowment have not occurred in accordance with the schedule set out in the Ayers settlement.*

  While funds were not specifically appropriated for the purpose of providing financial assistance for the summer programs, the programs were nonetheless conducted in the years prior to FY 2006 (i. e., FY 2002 through FY 2005). During the period when appropriations were not made for financial assistance, the universities bore the entire burden of funding. Since FY 2006, the Legislature has funded the Summer Developmental Education Program providing all amounts that would have been required under the FY 2003 required level and proceeding in sequence.

- *Despite the fact that the appeal was not dismissed until November 2004, funding for new programs and enhancements was provided in good faith during the period between FY 2002 and FY 2005.*

  Although these amounts did not equal the amounts set out in the Settlement Agreement, there were efforts at funding the programs required in the court's final decree and it was made clear that further funding of the programs required in the Settlement Agreement would be funded once all appeals were dismissed.

- *Funding of the public endowment that was created in the Settlement Agreement did not occur on schedule but did occur after the appeal was dismissed.*

  According to the Office of the State Treasurer, the $15 million public endowment was created in the Working Cash Balance Stabilization Fund as required by the settlement and Chapter 583, *Laws of 1997*, amending MISS. CODE ANN. Section 27-103-203 (1972).

  As in other cases, appropriations of endowment funds did not occur in FY 2002 as contemplated by the settlement, but did occur regularly from FY 2006 through FY 2009. Beginning in FY 2006 and continuing through FY 2009, the Legislature appropriated the mandatory $5 million of the total amount as contemplated by the Settlement Agreement.

Beginning in FY 2006, the Legislature began funding *Ayers* programs as if FY 2006 had been the first year of the settlement schedule--i. e., funding programs and other activities at the levels that would have been required in FY 2003. Assuming that the Legislature continues this practice, the *Ayers* Settlement Agreement will be funded in its entirety, albeit later than scheduled in the Settlement Agreement. As of October 2008, the public endowment contained a principal amount of $35 million, including $15 million invested by the Treasury.

IHL's Compliance With the *Ayers* Settlement

IHL has implemented capital projects and educational programs in conformity with the Settlement Agreement.

While the Settlement Agreement made specific reference to capital projects to be funded and programs to be created or enhanced, appropriations and bond bills were generally silent as to the objects to be funded. This placed the responsibility on the IHL Board of Trustees to ensure that the funds provided were expended in a manner according to the settlement.

IHL has complied with terms of the Settlement Agreement as follows:

- *IHL has managed capital improvement funds in accordance with the Settlement Agreement.*
- *IHL has managed the program creation and enhancement process in accordance with the Settlement Agreement.*

  PEER notes that most programs required by the Settlement Agreement have been implemented. PEER also notes that *Ayers* funding has been expended on several programs that were not specifically mentioned in the settlement.

Distribution of Interest From the Endowments

Interest from the endowments has been distributed in accordance with the Settlement Agreement. PEER notes that the private endowment has not reached the amounts anticipated by the Settlement Agreement and thus has generated less interest than anticipated.

The Legislature is required to distribute interest from the endowment to the three historically black institutions. A formula was established in the settlement providing for the distribution of income. Because the settlement did not become final until FY 2006, distributions preceding that year did not follow the allocations set out in the agreement, but the institutions did receive distributions for programs totaling $60,634,000 from FY 2002 through FY 2009. (See pages 23 through 25 of the report for the distributions by institution by fiscal year.)

Since FY 2006, the $15 million trust maintained in the Treasury has generated $1,229,096 in interest, of which $605,643 has been distributed. During that same period, the private endowment has consisted of $1,000,000. This has generated $142,449 in interest, of which $68,961 has been distributed.

PEER notes that the success of the private endowment has been limited. The Settlement Agreement anticipated the creation of a $35 million private endowment that could be managed by the three historically black institutions. The target date for this goal was seven years after the adoption of the Settlement Agreement. It would appear that without major contributions by the private endowment by FY 2012, the private endowment would not reach the agreement goal of $35 million.

Recommendations

1. In view of the fact that full funding of the *Ayers* settlement was delayed because the plaintiff's appeal was not dismissed until 2004, the Legislature should, at minimum, continue to make appropriations in compliance with the Settlement Agreement, as it has since FY 2006, by appropriating funds following the schedule set out in the settlement (e. g., the FY 2006 appropriation tracked the payment amount scheduled for FY 2003). The appropriations should follow the schedule set out in the following table:

Fiscal Year	Programs	Public Endowment	Summer Enhancement
2011	$20,200,000	$5,000,000	$750,000
2012	13,467,000	5,000,000	750,000
2013	13,467,000	5,000,000	750,000
2014	13,467,000	5,000,000	750,000
2015	13,467,000	5,000,000	500,000
2016	13,467,000	5,000,000	$0
2017	13,467,000	$0	$0
2018	6,733,000	$0	$0
2019	6,733,000	$0	$0
2020	6,733,000	$0	$0
2021	6,733,000	$0	$0

By the conclusion of FY 2021, the Legislature should also appropriate the difference in funds appropriated between FY 2002 and FY 2005 and the amounts that the settlement schedule required.

2. In view of the fact that the private endowment has not succeeded in raising the funds as envisioned by the settlement, the Board of Trustees of State Institutions of Higher Learning should recommend strategies to the historically black institutions for raising additional income. In the event that those efforts fail, the IHL Board should make recommendations to the Legislature on what additional efforts might be taken to foster interest and contributions to the private endowment.

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Mississippi's Compliance with the *Ayers* Settlement Agreement

Introduction

In 1975, Jake Ayers, the father of a student at one of Mississippi's historically black universities, commenced a class action suit in the United States District Court for the Northern District of Mississippi. The suit was directed against the State of Mississippi and its university system alleging that Mississippi operated a dual system of university that discriminated on the basis of race and was thereby unconstitutional under the Equal Protection Clause of the United States Constitution. This litigation came to an end approximately thirty years later with the adoption of a Settlement Agreement in the case of *Ayers v. Fordice*. The Settlement Agreement set out the state's duties with respect to the enhancement of programs and facilities at the three historically black institutions.

Authority

In conducting this review, PEER exercised authority granted by MISS. CODE ANN. Section 5-3-51 et seq. (1972).

Scope and Purpose

This report focuses on the terms of the Settlement Agreement with the purpose of determining whether the state and its institutions of higher learning have complied with the terms of the Settlement Agreement and whether the state has provided resources for educational programs and infrastructure as contemplated by the *Ayers* Settlement Agreement.

Method

In conducting this review, PEER:

- reviewed the *Ayers* decisions rendered by the federal courts;
- reviewed the Settlement Agreement entered into by the parties to the litigation;
- reviewed records of the Board of Trustees of State Institutions of Higher Learning that document compliance with the *Ayers* Settlement Agreement; and,
- reviewed appropriations and bond legislation that included funding for *Ayers*-related programs.

Background

In 1975, Jake Ayers brought a class action suit against the state for injunctive relief to bring an end to discriminatory practices in the administration and funding of higher education in Mississippi. During the next twelve years, the plaintiffs hoped that negotiations with the state's higher education administrators could bring changes to the operations of the state's four-year institutions of higher learning. In 1987, apparently dissatisfied with the progress of negotiations, the plaintiffs chose to litigate their claims in the United States District Court for the Northern District of Mississippi. The decision of the District Court was appealed to the United States Court of Appeals for the Fifth Circuit [see *Ayers v. Allain*, 914 F 2d. 674 (5 Cir, 1990)]. Following the Fifth Circuit ruling, the plaintiffs and appellants ultimately sought review in the United States Supreme Court [see *Ayers v. Mabus*, 499 U.S. 958, 111 S. Ct. 1579 (1991)], wherein the Supreme Court granted certiorari. This round of litigation culminated in the 1992 United States Supreme Court decision in *Ayers v. Fordice*, 505 U.S. 717, 112 S. Ct. 2727 (1992).

The Supreme Court vacated and remanded the Fifth Circuit's decision and in doing so concluded the lower court had not used the proper standard for determining whether the discriminatory effects of the *de jure* system of segregation had been eliminated. In particular, the court remanded for further consideration of several factors that, while race-neutral, might perpetuate the remnants of a segregated system of higher education:

- whether the state's use of American College Testing scores for admission and the differential for historically white and black institutions could be justified;

- the extent to which program duplication, when considered in conjunction with other remnants of the segregated system, affects the state's meeting of its constitutional duty to eliminate vestiges of past discrimination;

- the Board of Trustees of Institutions of Higher Learning's 1981 mission statements when considered in conjunction with other factors;

- the continued operation of eight separate institutions; and,

- the examination of funding under the proper standard to determine whether the state is taking the proper steps to dismantle the *de jure* discriminatory system.

On remand, the United States District Court for the Northern District of Mississippi ordered that the state take several actions regarding the implementation of non-discriminatory admissions standards, creation of new programs at Jackson State and Alcorn State universities, creation of an endowment for Jackson State University as well as a revision of the mission of Jackson State University, and continued study of the effects that the continued operation of Mississippi Valley State University and Delta State University have on continued segregation in the university system. See *Ayers v. Fordice,* 879 F. Supp 1419 (N.D. Miss, 1995).

After the 1995 decision, private plaintiffs and the United States government continued to challenge the adequacy of the remedies ordered by the United States District Court. Finally, in 2002, the parties to the litigation, with court approval, agreed to a Settlement Agreement that set out the state's duties with respect to the enhancement of programs and facilities at the three historically black institutions (Alcorn State University, Jackson State University, and Mississippi Valley State University). This Settlement Agreement is discussed more in the following sections and serves as the criterion for whether the state is in compliance with the court's directives in *Ayers*. While the District Court approved the settlement in 2002, the plaintiffs did not seek and obtain dismissal of their appeal of the *Ayers* decree until November 2004. Dismissal was a pre-condition to the Settlement Agreement becoming effective.

Chapter 1: The Settlement Agreement

Settlement Agreement in General

On February 15, 2002, the United States District Court for the Northern District of Mississippi entered final judgment approving a settlement between the *Ayers* plaintiffs and the State of Mississippi. In so acting, the court made note of the fact that the Settlement Agreement went beyond what the court considered would be necessary to provide a remedy for eliminating remnants of a dual, segregated system of higher education. However, the court noted that it is not illegal for the state to do more than is required by the Constitution. The settlement accomplished a full, complete, and final resolution of the plaintiffs' claims. All pending claims were to be dismissed upon the approval of the settlement. The private plaintiffs' appeal was dismissed on November 26, 2004.

The Settlement Agreement obligates the Legislature to fund educational programs and enhancements, capital projects, and a public endowment in accordance with the settlement's terms. The Board of Trustees of State Institutions of Higher Learning (IHL) and the individual institutions must implement programs and capital projects in accordance with the terms of the Settlement Agreement. The Settlement Agreement gives IHL and the institutions some flexibility in implementation that is outlined beginning on page 7.

Of critical importance to the issue of compliance with the settlement is the language found at Section X, paragraph D of the Settlement Agreement. This language provides:

> *The agreement shall be come final upon the occurrence of all of the following three events (i) approval of the agreement in all respects by the district Court as required by Rule 23(e) of the Federal Rules of Civil Procedure; (ii) entry of the judgment as provided for above; and (iii) expiration of the time for appeal or to seek permission to appeal from the District Court's approval of the agreement and entry of the judgment, or if the judgment is appealed, affirmance of the approval of the agreement and the judgment in their entirety by the court of last resort to which such appeal has been taken with such affirmance no longer subject to further appeal or review.*

An appeal in this case was dismissed on November 26, 2004.

The Agreement's Particulars

The Settlement Agreement set out the obligations of the state with respect to the creation and funding of new programs, the improvement of infrastructure at the historically black institutions, and the creation of endowment funds for the institutions. The following sections discuss these obligations and the program funding:

- summer financial assistance;
- academic programs;
- program enhancements,
- endowments; and,
- capital improvements.

Summer Financial Assistance

The settlement directed the state to provide financial assistance programs for persons attending Summer Developmental Education Programs at the eight state universities. These programs are intended to provide incoming students with developmental programs in reading, English, mathematics, and general learning skills to enable them to have successful college careers. These courses are offered at all eight institutions.

The IHL Board of Trustees and the Legislature were directed to fund $500,000 per year from FY 2002 through FY 2006 and $750,000 per year from FY 2007 through FY 2011 for summer programs at all institutions. The funds should be carried over from year to year until such time as the program terminates. At such time, fund balances shall lapse to the State Treasury.

Academic Programs

For seventeen years, from FY 2002 through FY 2018, the order called for major improvements to be effected at the three historically black institutions. Specifically, Section III of the settlement requires that the three historically black institutions annually submit budgets to IHL for program implementation. The IHL Board of Trustees retains the right to evaluate proposals for use of *Ayers* funding and evaluate these proposed uses in light of program objectives. IHL may redirect funds after consultation with the presidents. The language does not mandate the immediate implementation of the programs set out in the settlement. Programs identified for establishment in the settlement include the following programs at the three historically black institutions.

Alcorn State University

The Settlement Agreement requires the creation of several new programs at Alcorn State University.

Program	Campus
Business Administration, Master's	Natchez
Accounting, Master's	Natchez
Finance, Bachelor's/Master's	Lorman
Physician's Assistant, Master's	Natchez/Vicksburg
Biotechnology, Master's	Lorman
Computer Networking, Bachelor's	Vicksburg
Environmental Science, Bachelor's	Lorman

Jackson State University

The Settlement Agreement also requires several new programs for Jackson State University.

Program
Business, Ph.D.
Urban Planning, Master's
Urban Planning, Ph.D.
Social Work, Ph.D.
Civil Engineering, Bachelor's
Computer Engineering, Bachelor's
Telecommunications Engineering, Bachelor's
Public Health, Master's
Health Care Administration, Bachelor's
Communicative Disorders, Master's
Higher Education, Ph.D.
Public Health, Ph.D.
Inter-institutional Pharmacy
School of Allied Health
School of Public Health
School of Engineering

Also included in the settlement was a provision related to an international studies program at Jackson State University. The settlement authorized the president of the university to submit a proposal to the IHL Board for an international studies program for evaluation under the board's standard policies for program evaluation.

Mississippi Valley State University

Mississippi Valley State University, like the two other historically black institutions, was also a beneficiary of new programs directed by the Settlement Agreement. The following table outlines these programs.

Program
History, Bachelor's
Special Education, Bachelor's/Master's
Computer Science, Master's
Bioinformatics, Master's
Leadership Administration, Master's
Business Administration, Master's

Program Enhancements

The Settlement Agreement also provided for enhancements for programs extant at the three historically black institutions. The settlement requires the institutions to submit budgets to IHL for these programs for review and approval. The IHL Board has the authority to substitute programs if it believes future circumstances so warrant. The board must consult with the presidents of the historically black institutions regarding changes to enhancements.

The following sections outline the programs to be enhanced. PEER notes that the exact enhancements for each program were not detailed in the settlement. Consequently, PEER assumes that increased spending on these program areas, absent a specific mandate, would constitute compliance with enhancements.

Alcorn State University

The settlement directed enhancements of the existing Alcorn State University programs listed below.

Program
Nursing
Teacher Education
Math and Sciences (Biology, Chemistry, Physics)
Computer Science

Jackson State University

The settlement directed enhancements of the existing Jackson State University programs listed below.

Program
Business
Education

Mississippi Valley State University

The settlement directed enhancements of certain programs at Mississippi Valley State University listed below.

Program
Biology
Chemistry
Computer Science
Math
Special Education, Master's

Endowments

The settlement required the creation of endowment funds. These funds are intended to generate funds that the three historically black institutions may use to generate income for the support of programs.

Public Endowment

The settlement requires creation of a publicly funded $70 million endowment over a fourteen-year period. Funding of the endowment is provided for in the section of the settlement addressing funding. Regarding the distribution of interest to the three historically black institutions, the following percentages were used:

- 28.3% to Alcorn State University;
- 43.4% to Jackson State University; and,
- 28.3% to Mississippi Valley State University.

Such funds shall be used for "other race" marketing programs and recruitment.[1] Principal shall not be invaded.

The settlement also requires that there be created a seven-member governing committee to administer the endowment. The membership of the committee is to include the presidents of the three historically black institutions, the President of the IHL Board of Trustees, the Commissioner of Higher Education, an appointee of the IHL Board president, and a seventh member agreed to by the other six members.

The committee shall manage the public endowment until such time as the historically black institution shall attain a 10% other race enrollment and maintains it for three years. When such happens, the university shall receive the same percentage principal as it received in interest. At such time, the university shall have the authority to direct the income of such endowment to educational programs and shall report on its use to the IHL Board. Failure to meet the goal in fourteen years carries certain consequences set in the agreement.

Private Endowment

The seven-member committee must also manage a private endowment. The settlement provided for $35 million in funds raised from private sources over seven years. The income allocations shall be identical to those set in the public endowment allocations. IHL must utilize its best efforts to obtain the commitments for this endowment, but the terms of the settlement may not be set aside for failing to reach the amount set out in the settlement.

Transfers of principal are made in accordance with the same policies set out in the public endowment provisions.

Capital Improvements

A major concern of the *Ayers* court and the Settlement Agreement was the physical plants of the historically black institutions. A portion of the settlement set out a requirement that the Legislature commit resources to several capital improvement projects at the three institutions. The following sections outline the projects required by the settlement.

[1] Because these are historically black institutions, the term "other race" in this report means persons who are not African-Americans.

Alcorn State University

Several capital projects were directed for Alcorn's Lorman and Natchez campuses. These included:

Program	Campus	Amount
MBA School	Natchez	$1.1 million
Fine Arts Center	Natchez	9.0 million
Dumas Hall Repairs and Renovations	Lorman	3.5 million
Purchase of property for campus access/security	Lorman	1.0 million
Biotech Building	Lorman	10.5 million

Jackson State University

The settlement required two major projects on the Jackson State University campus. These were:

Program	Amount
Engineering Building	$20.0 million
Allstate Building	3.3 million

Mississippi Valley State University

As with Alcorn State University and Jackson State University, Mississippi Valley State University received several capital projects directed by the settlement. These included:

Program	Amount
Library Enhancements	$5.0 million
Science/Technology Building	16.7 million
Landscape/Drainage	3.0 million
Repairs and Renovations	1.9 million

The settlement directs that legislative authorization of funding be spread out between FY 2002 and FY 2006. Project substitutions may be made in consultation with the presidents of the historically black institutions.

Funding of Programs

Except for private grants made in accordance with Section 4 of the Settlement Agreement (Private Endowments), all funds must come from either bond funds or appropriations from the Legislature. The board must seek and the Legislature must fund programs as follows.

Summer Developmental Education Program

The state must fund a Summer Developmental Education Program of developmental education for persons under the age of twenty-one. The funding required by the settlement is as follows:

Years	Annual Funding Mandate
FY 2002-FY 2006	$500,000
FY 2007-FY 2011	750,000

New Programs and Enhancements

Total appropriation for new programs over seventeen years will be $245,880,000, as set out in the table below.

School	FY 2002	FY 2003-FY 2008	FY 2009-FY 2014	FY 2015-FY 2018
ASU	$3,112,000	$4,350,000 per year	$2,900,000 per year	$1,450,000 per year
JSU	10,485,000	11,500,000 per year	7,667,000 per year	3,833,000 per year
MVSU	3,349,000	4,350,000 per year	2,900,000 per year	1,450,000 per year

Public Endowment

The Legislature must appropriate $70 million over fourteen years to be appropriated to the board as follows:

Years	Amounts	Source
FY 2002-FY 2012	$5,000,000 per year	MISS. CODE ANN. Section 27-103-203 (1972)
FY 2013-FY 2015	5,000,000 per year	MISS. CODE ANN. Section 37-101-27 (1972)

Capital Projects and Improvements

The Legislature must provide $75 million in bond financing for the capital projects set out in the settlement.

Other Matters

The settlement also addressed several other matters that had an effect on university programs, facilities, or otherwise affected the expenditure of state funds.

Release of Funds

The court released $3.6 million in funds that were earlier appropriated for programs and were frozen by the court in 2000. The Legislature ultimately re-appropriated these funds to be used for *Ayers* programs in FY 2003. These funds were to be utilized by the historically black institutions for programs authorized in Section 3 of the Settlement Agreement.

Comprehensive Status of Jackson State University

The Settlement Agreement recognized that Jackson State University engages in a wide variety of research projects and provides professional programs and graduate programs in the Jackson area. Because of the wide range of programs offered, the Settlement Agreement makes clear that Jackson State University should be recognized as a comprehensive university.

Memorial Stadium and the Universities Center

The Settlement Agreement also requires that state law designate Mississippi Memorial Stadium as the home of Jackson State football and that the appropriate signage should be posted at the stadium. Additionally, Jackson State University is also to have control over the Universities Center[2].

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[2] This refers to the transfer of the management of classroom facilities in what is known as the Thrash Building, located at 3825 Ridgewood Road in Jackson, to Jackson State University.

Chapter 2: Compliance with Terms of the Settlement Agreement

As the Settlement Agreement displaces the earlier decree of the court regarding the state's obligations to eliminate remnants of segregation in the university system, the settlement has the effect of law. IHL must make reports to the court on progress toward fulfillment of the terms of the settlement. In view of this, PEER considers the Settlement Agreement as the basis for determining whether the state has provided the programs, funding, and facilities mandated by the court.

The Settlement Agreement places burdens on both the Legislature to fund programs and upon the IHL Board to administer programs in accordance with the terms of the agreement. The following sections discuss the Legislature's and IHL's compliance with the mandates.

Legislative Compliance with the *Ayers* Settlement

Because the plaintiffs' appeal was not dismissed until almost three years after the date on which the United States District Court entered final judgment in the matter, the Legislature's implementation of the *Ayers* settlement was delayed. Consequently, some funding has not been appropriated or distributed in accordance with the schedule set out in the agreement.

The *Ayers* settlement anticipated implementation in FY 2002 and established a multi-year schedule for funding of programs, endowments, and capital improvements.

The *Ayers* settlement anticipated implementation in FY 2002 and established a multi-year schedule for funding of programs, endowments, and capital improvements. Because under the terms of the settlement implementation was not to begin until all appeals were dismissed and the plaintiff's appeal was not dismissed until November 26, 2004, the implementation of schedules for certain program payments was delayed.

The following sections discuss which portions of the mandated funding elements were delayed and which were funded on schedule or completed, albeit after the schedule, for implementation.

The Settlement Agreement requirement for $75 million in bond financing for the capital projects has been provided.

The *Ayers* bond authorizations did not set out the projects for which funds were to be used, thereby leaving that matter to IHL.

Four bond bills passed between FY 2001 and FY 2004 provided the $75 million for the funding of capital projects. In each bill discussed below, the Legislature created a special fund into which bond proceeds were to be deposited for use on *Ayers* settlement projects. With one exception mentioned below, the *Ayers* bond authorizations did not set out the projects for which funds were to be used, thereby leaving that matter to IHL as contemplated by the settlement.

- *SB 3158, Regular Session, 2001 (Chapter 600, Laws of 2001):* Prior to the adoption of the *Ayers* settlement, in 2001 the Legislature began the process of making bond funds available for capital improvements to the three black university campuses. Sections 27 and 28 of the aforementioned bill provided $11,700,000 for uses under the discretion of IHL for projects set out in the *Ayers* settlement and $3,300,000 to secure the Allstate Building in Jackson, an acquisition described in the *Ayers* Settlement Agreement[3]. The legislation also set up special funds in the Treasury into which bond proceeds were to be deposited.

- *SB 3197, Regular Session, 2002 (Chapter 550, Laws of 2002):* In 2002, the Legislature directed the creation of an *Ayers* settlement (2002 Capital Projects Fund in the Treasury) and made an additional $15 million in bond funds available to fund *Ayers* settlement capital projects.

- *SB 2988, Regular Session, 2003 (Chapter 522, Laws of 2003):* Section 10, SB 2988, Regular Session 2003, authorized an additional $15 million in bond funds for *Ayers* settlement projects and created a special fund into which they were to be deposited.

- *SB 2010, Third Extraordinary Session, 2004 (Chapter 1, Laws of the Third Extraordinary Session, 2004):* In 2004, the Legislature authorized $30,000,000 in bonding for *Ayers* settlement projects, thereby completing the

[3] The funds authorized in this bond bill were used to acquire the Allstate Building by paying off the outstanding balance on a lease.

Legislature's obligation to authorize funding for *Ayers* capital projects.

The allocation of proceeds from these issues to specific projects is discussed in the following sections.

The Legislature has provided $2,500,000 in attorneys' fees as required by the settlement.

In view of the fact that the appeal was not dismissed until November 2004, the payments were not made on the schedule that was contemplated by the settlement.

The Settlement Agreement required the state to pay a total of $2,500,000 in attorneys' fees, which included $250,000 previously deposited into the United States District Court prior to the Settlement Agreement. Based on a review of both IHL accountability reports filed with the court and appropriations bills, the Legislature authorized $1,000,000 in attorneys' fees in FY 2005 and $1,250,000 in FY 2007.

The settlement called for providing the first $1 million within sixty days of the settlement becoming final and the final $1,250,000 by FY 2004. In view of the fact that the appeal was not dismissed until November 2004, the payments were not made on the schedule that was contemplated by the settlement. PEER notes that the Legislature has since appropriated all funds necessary to meet the obligations for attorneys' fees.

Because the appeal was not dismissed until 2004, appropriations for the Summer Developmental Education Programs, new university programs and enhancements, and the public endowment have not occurred in accordance with the schedule set out in the Ayers settlement.

The Legislature did not specifically appropriate any funds for Summer Developmental Education Programs between FY 2002 and FY 2005. Beginning in FY 2006, the Legislature specifically appropriated funds for the Summer Developmental Education Program. The Legislature appropriated $500,000 for these programs in FY 2006 through FY 2009.

Since FY 2006, the Legislature has funded the Summer Developmental Education Programs, providing all of the amounts that would have been required under the FY 2003 required level and proceeding in sequence.

While funds were not specifically appropriated for the purpose of providing financial assistance for the summer programs, the programs were nonetheless conducted in the years prior to FY 2006 (i. e., FY 2002 through FY 2005). During the period when appropriations were not made for financial assistance, the universities bore the entire burden of funding. Since FY 2006, the Legislature has funded the Summer Developmental Education Programs, providing all of the amounts that would have been required under the FY 2003 required level and proceeding in sequence.

Despite the fact that the appeal was not dismissed until November 2004, funding for new programs and enhancements was provided in good faith during the period between FY 2002 and FY 2005. However, these amounts did not equal the amounts set out in the Settlement Agreement.

The Legislature's good faith efforts at funding programs required in the court's final decree made clear that further funding of the programs required in the Settlement Agreement would be funded once all appeals were dismissed.

Between FY 2002 and FY 2005, the Legislature made good faith efforts at providing funding for *Ayers* activities. While these amounts did not comport with the amounts set out in the Settlement Agreement, they were efforts at funding programs required in the court's final decree and made clear that further funding of the programs required in the Settlement Agreement would be funded once all appeals were dismissed. The differences in the amounts appropriated and the amounts for programs set out in the Settlement Agreement schedule are as follows:

Fiscal Year	Settlement Schedule	Amount Obtained[4]	Difference
2002	$16,946,000	$13,346,000	$3,550,000
2003	$20,200,000	13,346,000	6,854,000
2004	$20,200,000	13,346,000	6,854,000
2005	$20,200,000	13,346,000	6,854,000

In FY 2003, the Legislature re-appropriated $7,200,000 for program funding that had not been spent in earlier years or had been frozen by the court. When deducting this amount from the differences set out above, the amounts obtained by IHL for programs during FY 2002 through FY 2005 were less than the scheduled amounts by $16,912,000.

PEER notes that in some cases, IHL was not able to expend all of its *Ayers* program funds appropriated in a given year:

- For FY 2002, the total amount appropriated for *Ayers*-related programs was $18,122,908, yet only $13,346,000 was expended of this funding.

- For FY 2004, IHL expended $13,201,036 of the $13,396,000 obtained for programs.

- Additionally, expenditure of the $7,200,000 re-appropriation made in FY 2003 occurred over a three-year period ending in FY 2005.

[4] When referencing funding for programs, capital projects, or other activities, the word *obtained* generally refers to funds that were either appropriated to IHL for *Ayers* purposes or bond funds that were authorized for projects. For FY 2002, funds obtained for programs and interest means those funds that were actually drawn for the activities described in the report.

Based on the fact that IHL did not spend all of the money it was given during FY 2002 through FY 2004, it appears that no injury occurred to the implementation of *Ayers*-related programs during this period.

Funding of the public endowment that was created in the Settlement Agreement did not occur on schedule, but did occur regularly after the appeal was dismissed.

As noted above, the settlement required that a public endowment be established for the historically black institutions from which interest over time could be utilized for program funding. Under the terms of the settlement, the following steps had to occur with respect to the creation of the endowment:

- the creation of a $15 million fund in the Working Cash Stabilization Reserve Fund to be managed in accordance with MISS. CODE ANN. Section 37-101-27 (1972); and,

- an appropriation of $5 million annually for a total of eleven years, beginning in FY 2002.

According to the Office of the State Treasurer, the $15 million endowment was created in the Working Cash Balance Stabilization Fund as required by the settlement and Chapter 583, *Laws of 1997*, amending MISS. CODE ANN. Section 27-103-203 (1972).

As in other cases, appropriations of endowment funds did not occur in FY 2002 as contemplated by the settlement, but did occur regularly from FY 2006 through FY 2009.

As in other cases, appropriations of endowment funds did not occur in FY 2002 as contemplated by the settlement, but did occur regularly from FY 2006 through FY 2009. Beginning in FY 2006 through FY 2009, the Legislature appropriated the mandatory $5 million of the total amount as contemplated by the Settlement Agreement.

The effects of the appropriations practices discussed above could not be avoided, since the appeals were still in process until FY 2006.

Beginning in FY 2006, the Legislature began funding *Ayers* programs and the public endowment as if FY 2006 had been the first year of the settlement schedule.

The Legislature made good faith efforts at providing funding for *Ayers* programs during the period FY 2002 through FY 2005, the period during which the court had approved the settlement but the plaintiffs' appeal had not been dismissed. Beginning in FY 2006, the Legislature began funding *Ayers* programs and the public endowment as if FY 2006 had been the first year of the settlement schedule--i. e., funding programs and the public endowment at the levels that would have been required in FY 2003. Assuming that the Legislature continues this practice, the *Ayers* Settlement Agreement will be funded in its entirety, albeit later than scheduled in the Settlement Agreement. As of October 2008, the public endowment contained a principal amount of $35 million, including $15 million invested by the State Treasury.

IHL's Compliance With the *Ayers* Settlement

IHL has implemented capital projects and educational programs in conformity with the Settlement Agreement.

The settlement established a process by which the presidents of the historically black institutions could consult with IHL on changes in activities to be provided or capital projects to be developed.

While the Settlement Agreement made specific reference to capital projects to be funded and programs to be created or enhanced, appropriations and bond bills were generally silent as to the objects to be funded. This placed the responsibility on the IHL Board of Trustees to ensure that the funds provided were expended in a manner in accordance with the settlement. In the areas of programs and capital projects, the settlement anticipated the possibility that a particular project might become unnecessary or that a program need might be better served through the creation of a program not provided for in the settlement. The settlement established a process by which the presidents of the historically black institutions could consult with IHL on changes in activities to be provided or capital projects to be developed.

IHL has managed capital improvement funds in accordance with the Settlement Agreement.

As noted on page 14 of the report, the Legislature authorized $75 million in general obligation bonds between FY 2001 and FY 2004 for *Ayers* projects. The following sections outline the projects on which funds were obtained and the amounts obtained by institution and funding legislation.

Alcorn State University

Project	Total Funds Obtained As of October 2008
Bio-Technology Building	$12,443,016
Dumas Hall Renovations (1)	3,656,727
Fine Arts Facility, Lorman (2)	7,650,000
Fine Arts Center, Natchez (3)	0
Furniture/Equipment for the MBA Program	650,000
Access and Other Improvements	679,226

(1) Includes cancelled pre-planning costs
(2) Not included in settlement
(3) Cancelled

PEER notes that the Fine Arts Center for Natchez that was included in the settlement was pre-planned but not commenced. Instead, a Fine Arts Center renovation on the Lorman campus was commenced. The changes in capital projects for Alcorn State University were approved by IHL. These changes were attributable to needs that arose particularly for renovation of an arts facility at Lorman. Dr. Clinton Bristow, the late president of Alcorn State, believed that the Lorman project would be more beneficial and that the Natchez project might proceed at a later date with support from the city as well as the university. Because the procurement of equipment for the business school and other property cost less than projected, the board was able to reallocate funds to other projects. The board has approved the Alcorn State University project changes.

Jackson State University

Project	Total Funds Obtained As of October 2008
Allstate Building Purchase	$ 3,300,000
Engineering School	19,996,628

Jackson State University's capital improvements have had the funds allocated to them in compliance with the estimates set out in the settlement.

Mississippi Valley State University

According to the October 2008 Accountability Manual filed with the United States District Court for the Northern District of Mississippi, the following capital projects were listed for Mississippi Valley State University:

Project	Total Funds Obtained As of October 2008
Library Enhancements	$ 850,000
Landscaping and Drainage	1,167,000
Repairs and Renovations	0
Science and Technology Building	13,475,994

PEER notes that funds have been obtained for *Ayers* capital projects and raises no material objection to IHL's management and oversight of the capital improvement funds made available for *Ayers* projects.

While there is variation in the amounts set out in the settlement and amounts obtained for the project thus far, IHL informed PEER that all funds necessary to carry out the projects are available to Mississippi Valley State University. Mississippi Valley State University is currently re-evaluating potential uses for some of its funding. At present, $11 million in bond funding is being held in an improvements category. This money will be available for the funding of *Ayers* projects. Additionally, the university may choose to seek funds for repair and renovation projects.

In summary, PEER notes that funds have been obtained for *Ayers* capital projects and raises no material objection to IHL's management and oversight of the capital improvement funds made available for *Ayers* projects.

IHL has managed the program creation and enhancement process in accordance with the Settlement Agreement.

IHL and its subordinate institutions have some discretion in determining whether a program will be established or enhanced and when such activity will commence.

As noted on pages 5 through 8, several programs were to be created or enhanced at the three historically black institutions. In reviewing information submitted to the court as part of the Board of Trustees of State Institutions of Higher Learning's annual accountability and compliance requirement, PEER notes that most programs have been implemented. The following discusses those that have not been established and the reasons why this has not occurred.

IHL notes that the settlement makes clear that the funding set out in the settlement may not be sufficient to establish the programs and that further, there may be changes over time that make other programs more beneficial to the purposes of the settlement than those set out. Therefore, IHL and its subordinate institutions have some discretion in determining whether a program will be established or enhanced and when such activity will commence. As noted previously, the settlement establishes a process by which the presidents of the three historically black institutions may consult regarding programs and their establishment. Additionally, the IHL staff trains institutional staff regarding the process by which they may request program funding.

Regarding programs described in the settlement and not yet established, PEER notes the following:

- **Alcorn State University:** The settlement provided for the establishment of master's programs in accounting and finance as well as a bachelor's degree in finance. At this time, these programs have not been established.
- **Jackson State University:** The Inter-institutional Pharmacy Initiative and International Studies program have not been established as of this date.
- **Mississippi Valley State University:** The computer science master's degree program has not been established.

In all cases noted above, the IHL Board of Trustees stated that the presidents of the affected institutions have not as yet requested that these programs be established and funded.

PEER also notes that *Ayers* funding has been expended on several programs that were not specifically mentioned in the settlement. These include the following:

Alcorn State University

In the most recent Accountability Manual filed with the court in October 2008, IHL disclosed expenditures at Alcorn State University for the following programs not mentioned in the *Ayers* settlement:

- library and technology enhancements;
- recruitment and image building; and,
- funding of a family clinic.

IHL has noted that these programs generally support the programs created and enhanced through *Ayers* funding. Further, the clinic provided nursing students with necessary experience for furthering their education.

Nursing was a program targeted for enhancement in the *Ayers* settlement.

Jackson State University

In the most recent Accountability Manual filed with the court in October 2008, IHL disclosed expenditures at Jackson State University for the following programs not mentioned in the *Ayers* settlement:

- Provost's Library and Scholarship Fund;
- *Ayers*-Related Reserves; and,
- College of Public Service.

IHL has noted that these program activities support the other *Ayers* programs and are appropriate expenditures of *Ayers* funds. The College of Public Service, for example, is responsible for many of the social service programs that are provided for in the *Ayers* settlement.

Mississippi Valley State University

In the most recent Accountability Manual filed with the court in October 2008, IHL disclosed expenditures at Mississippi Valley State University for the following programs not mentioned in the *Ayers* settlement:

- Distinguished Visiting Professor Program;
- Institute for Effective Teaching;
- Greenwood Center; and,
- other race recruitment.

It appears to PEER that the listed programs would address concerns or support programs set out in the *Ayers* settlement and should be beneficial to achieving the goals of the settlement.

The first two programs were identified in a 1998 report regarding desegregation of higher education in the Mississippi Delta and were recommended programs for improving opportunities at Mississippi Valley State University. The Greenwood Center and other race recruitment both enhance programs required by *Ayers* and assist in meeting goals under the *Ayers* settlement for increasing other race enrollment at the university.

In all cases, while not specifically provided for in the *Ayers* settlement, it appears to PEER that these programs would address concerns or support programs set out in the *Ayers* settlement and should be beneficial to achieving the goals of the settlement.

IHL has addressed additional matters brought forth in the Settlement Agreement, but the private endowment has not generated the amount of funds contemplated by the Settlement Agreement.

IHL has recognized Jackson State as a comprehensive university and has transferred control of the Universities Center to Jackson State as required.

Interest on endowments has been appropriated and distributed to the institutions. Additionally, IHL has recognized Jackson State as a comprehensive university and has transferred control of the Universities Center to Jackson State as required. State law recognizes Mississippi Memorial Stadium as the home of Jackson State football and creates the right of the university to use the stadium for sporting, ceremonial, and concert events.

The private endowment has not generated funds as contemplated by the Settlement Agreement. (See page 26.)

Distribution of Interest From the Endowments

Interest from the endowments has been distributed in accordance with the Settlement Agreement. PEER notes that the private endowment has not reached the amounts anticipated by the Settlement Agreement and thus has generated less interest than anticipated.

Interest on Funds Maintained in the Treasury

The Legislature appropriates and the Treasurer distributes interest from the endowment to the three historically black institutions. As noted on pages 8 and 9, a formula was established in the settlement providing for the distribution of income as follows:

- 28.3% to Alcorn State University;
- 43.4% to Jackson State University; and,
- 28.3% to Mississippi Valley State University.

Because the settlement did not become final until FY 2006, distributions preceding that year did not follow the allocations set out above. The following table shows the distribution of endowment income to the three historically black institutions from FY 2002 to FY 2009.

Institutions	Interest Appropriated and Distributable	Interest Distributed
FY 2002	*$900,000*	
Alcorn State		$300,000
Jackson State		300,000
Mississippi Valley State		300,000

FY 2003	*900,000*	
Alcorn State		300,000
Jackson State		300,000
Mississippi Valley State		300,000
FY 2004	*900,000*	
Alcorn State		300,000
Jackson State		300,000
Mississippi Valley State (1)		228,520
FY 2005	*450,000*	
Alcorn State		150,000
Jackson State		150,000
Mississippi Valley State		150,000
FY 2006 (2)	*554,958*	
Alcorn State		157,053
Jackson State		240,852
Mississippi Valley State (1)		137,637
FY 2007	*212,226*	
Alcorn State		60,060
Jackson State		92,106
Mississippi Valley State		60,060

FY 2008	*301,866*	
Alcorn State		85,434
Jackson State		131,018
Mississippi Valley State		85,434

FY 2009	*845,576*	
Alcorn State		(3)
Jackson State		(3)
Mississippi Valley State		(3)

(1) Mississippi Valley State did not expend its full allocation in these fiscal years. Only the portion expended is reflected in the tables as reported by IHL.
(2) Use of the settlement allocation formula begins with the year FY 2006.
(3) FY 2009 actual expenditures are not available at this time.

Interest Distributions from Other Public Endowment Sources

The amount of interest earned on the public endowment during a current fiscal year is subsequently budgeted in the following fiscal year's budget.

While the table on pages 23 through 25 depicts interest distributions from the $15 million trust maintained in the Treasury, additional amounts of interest have been earned from annual payments appropriated to IHL since 2006. These are the annual $5 million increments that were required by the settlement and first appropriated in FY 2006. Since FY 2006, the funds have generated $1,299,096 in interest, of which $605,643 has been distributed. In accordance with the settlement's requirement that the institutions must submit annual budgets for the interest income to the board, the amount of interest earned during a current fiscal year is subsequently budgeted in the following fiscal year's budget.

Interest on the Private Endowment

Since FY 2006, the private endowment has consisted of $1,000,000. This has generated $142,449 in interest, of which $68,961 has been distributed. In accordance with the settlement's requirement that the institutions must submit annual budgets for the interest income to the board, the amount of interest earned during a current fiscal year is subsequently budgeted in the following fiscal year's budget.

PEER notes that the success of the private endowment has been limited. The Settlement Agreement anticipated the creation of a $35 million private endowment that could be managed by the three historically black institutions. The target date for this goal was seven years after the adoption of the Settlement Agreement. It would appear that without major private contributions to the private endowment by FY 2012, the private endowment would not reach the agreement goal of $35 million.

Compliance with Other Matters in the Settlement Agreement

Jackson State's Identification as a Comprehensive Institution

Jackson State University is now considered to be a comprehensive university. Its current mission statement reflects that it is a doctoral, research-intensive institution.

The Mississippi Memorial Stadium and the Universities Center

MISS. CODE ANN. Section 55-23-6 (1972) recognizes that Mississippi Memorial Stadium is the home of Jackson State football. Further, this section grants the right to Jackson State to hold any sporting, ceremonial, or concert event at the stadium.

Regarding the Universities Center, the responsibility for managing the facility was transferred to Jackson State University as called for in the settlement on May 15, 2003.

Chapter 3: Recommendations

1. In view of the fact that full funding of the *Ayers* settlement was delayed because the plaintiff's appeal was not dismissed until 2004, the Legislature should, at minimum, continue to make appropriations in compliance with the Settlement Agreement, as it has since FY 2006, by appropriating funds following the schedule set out in the settlement (e. g., the FY 2006 appropriation tracked the payment amount scheduled for FY 2003). The appropriations should follow the schedule set out in the table below:

Fiscal Year	Programs	Public Endowment	Summer Enhancement
2011	$20,200,000	$5,000,000	$750,000
2012	13,467,000	5,000,000	750,000
2013	13,467,000	5,000,000	750,000
2014	13,467,000	5,000,000	750,000
2015 (1)	13,467,000	5,000,000	500,000
2016	13,467,000	5,000,000	$0
2017	13,467,000	$0	$0
2018	6,733,000	$0	$0
2019	6,733,000	$0	$0
2020	6,733,000	$0	$0
2021	6,733,000	$0	$0

(1) In FY 2010, the Legislature appropriated $750,000 for summer programs. This was actually $250,000 in excess of what the schedule would have called for. This explains why the final summer program amount set out above is $500,000 rather than $750,000.

By the conclusion of FY 2021, the Legislature should also appropriate the difference in funds appropriated between FY 2002 and FY 2005 and the amounts that the settlement schedule required.

2. In view of the fact that the private endowment has not succeeded in raising the funds as envisioned by the settlement, the Board of Trustees of State Institutions of Higher Learning should recommend strategies to the historically black institutions for raising additional income. In the event that those efforts fail, the IHL Board

should make recommendations to the Legislature on what additional efforts might be taken to foster interest and contributions to the private endowment.

MISSISSIPPI

INSTITUTIONS OF HIGHER LEARNING

Office of Commissioner

September 2, 2009

RECEIVED
SEP 2 2009
PEER COMMITTEE

Dr. Max K. Arinder, Ph.D.
Executive Director
Joint Committee on Performance
Evaluation and Expenditure Review
Post Office Box 1204
Jackson, MS 39215-1204

Re: Board of Trustees of State Institutions of Higher Learning – Review of the State's compliance with the decision in *Ayers* vs. *Fordice*

Dear Dr. Arinder:

In response to the Joint Committee on Performance Evaluation and Expenditure Review (PEER) confidential draft report labeled "Mississippi's Compliance with the Ayers Settlement Agreement" the Mississippi Institutions of Higher Learning (IHL) responds to the recommendations noted in the report as follows:

PEER Recommendation 1. In view of the fact that full funding of the Ayers settlement was delayed because the plaintiff's appeal was not dismissed until 2004, the Legislature should, at minimum, continue to make appropriations in compliance with the Settlement Agreement, as it has since FY 2006, by appropriating funds following the schedule set out in the settlement (e.g., the FY 2006 appropriation tracked the payment amount scheduled for FY 2003. The appropriations should follow the schedule set out in the table below:

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2014	13,467,000	5,000,000	750,000
2015	13,467,000	5,000,000	500,000
2016	13,467,000	5,000,000	
2017	13,467,000		
2018	6,733,000		
2019	6,733,000		
2020	6,733,000		
2021	6,733,000		

**Table includes revisions agreed to at August 24, 2009 meeting with Ted Booth.*

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By conclusion of FY 2021, the Legislature should also appropriate the difference in funds appropriated between FY 2002 and FY 2005 and the amounts that the settlement schedule required.

IHL Response to Recommendation 1. IHL recommends and requests that the Legislature make any and all appropriations necessary for full compliance with the Settlement Agreement.

PEER Recommendation 2. In view of the fact that the private endowment has not succeeded in raising the funds as envisioned by the settlement, the Board of Trustees of State Institutions should recommend strategies to the historically black institutions for raising additional income. In the event that those efforts fail, the IHL Board should make recommendations to the Legislature on what additional efforts may be taken to foster interest and contributions to the private endowment.

IHL Response to Recommendation 2. The Settlement Agreement requires that a seven-member committee manage both the public and private endowment until such time as the historically black university attains a total headcount other-race enrollment of 10% and sustains such a 10% other-race enrollment for a period of three years. The agenda for the annual committee meeting includes a progress report regarding the private endowment. The Committee is reminded annually of the settlement stipulation regarding the private and public endowments.

Please contact Cheryl Mowdy at 601.432.6112 or via email at cmowdy@mississippi.edu should you have any questions.

Sincerely,

Hank M. Bounds
Commissioner of Higher Education

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