

**MEMORANDUM**

**To:** Board of Regents  
**From:** Board Office  
**Subject:** Appeal of an Institutional Decision  
**Date:** May 6, 2002

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**Recommended Action:**

Adopt the response (Attachment A) to the request before the Board for a Declaratory Order in matters relating to the Malcolm Price Laboratory School at the University of Northern Iowa.

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**Executive Summary:**

Petitioner requests Declaratory Order	<ul style="list-style-type: none"> <li>• The Malcolm Price Laboratory School Parent Teacher Partnership (MPLSPTP) has petitioned the Board for a Declaratory Order in the matter of closing grades 10 through 12 of the Malcolm Price Laboratory School. (A copy of the petition is in the Regent Exhibit Book.)</li> </ul>
Petitioner asks to address Board; will be on UNI docket	<ul style="list-style-type: none"> <li>• The petition also asks that the MPLSPTP be permitted to address the Board on this matter. The request to address the Board will be handled separately, as a part of the University of Northern Iowa's institutional docket.</li> </ul>
Board's legal counsel recommends no Declaratory Order be issued	<ul style="list-style-type: none"> <li>• The Board's counsel, Special Assistant Attorney General Ann Marie Brick, has reviewed the petition of the MPLSPTP and determined that it is outside the contemplation of the law for the matter to be addressed through a Declaratory Order.</li> <li>• Ms. Brick's proposed response is Attachment A. She finds the request for a Declaratory Order should be denied.</li> </ul>
Board Office concurs	<ul style="list-style-type: none"> <li>• The Board Office concurs with Ms. Brick's finding and recommends adoption of the response (Attachment A).</li> </ul>

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**Background:**

<u>Petitioner alleges:</u> Dean Switzer announces closing grades 10-12	<ul style="list-style-type: none"> <li>• The facts alleged by the petitioner, MPLSPTP, include that –           <ul style="list-style-type: none"> <li>○ On February 20, 2002, College of Education Dean Thomas Switzer announced that instruction in grades 10-12 of the Malcolm Price Laboratory School (MPLS) would be moved to area high</li> </ul> </li> </ul>
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- Proposal to parents
  - schools beginning in the 2003-04 academic year;
  - The information on this change was communicated to parents by letter dated February 21, 2002;
- Faculty had no notice
  - The proposed change was approved by University administrators;
  - No faculty had notice of the proposed change prior to the February 20 meeting;
- No study supports
  - At the February 20 meeting no reference was made to any study or curricular development process which would support the change;
- Dean says not because of budget
  - Dean Switzer denied that either budget concerns or faculty performance was a factor in the decision to make the change;
  - MPLSPTP believes that budget concerns were a factor in the decision based on President Koob's presentation to the Board in a meeting on February 20, 2002 in which President Koob estimated saving \$1 million in direct teaching costs plus saving in physical plant expenses;
- President Koob identifies budget issues
- Decision cannot be appealed
  - At the February 20 meeting, Dean Switzer said the change was a final decision with no appeal rights for redress by any affected parent, student or faculty member;
- Tenured and tenure track faculty retained
  - The University's press release of February 21, 2002 poses several responses to the question of "why" make these changes. The responses include that tenure and tenure track faculty will be retained and moved to new positions;
- Central mission not considered
  - MPLSPTP believes the change departs from the central mission of the University to be a leader in area teacher education;
  - A study team (ST) was convened in June 2001 to make recommendations on how MPLS could best achieve its mission of providing high quality education to the children it served, participating fully in the teacher education program of the University, and contributing to the ongoing education of educators in Iowa, the nation and the world;
- Study Team considering Price Lab School
  - The ST was expected to make its recommendations in light of current best directions in education, best thoughts on the role of MPLS in teacher education at UNI, and effective methods of responding to the professional development needs of teachers;
  - The ST focused on ways to identify and implement "value added dimensions to MPLS and to find ways to trim \$200,000 from the MPLS budget;
- Study Team report
  - The ST delivered its report to Dean Switzer in December 2001;
  - The ST did not recommend the changes proposed by the University;
  - The ST recommended expanded and strengthened research and curriculum development, strengthened teacher education, expanded service (outreach) to the State of Iowa, including educational equity via electronic access, and trimming \$200,000 from the budget through attrition and faculty reassignment;
  - MPLSPTP believes neither the Cedar Falls nor the Waterloo School Districts was consulted in a meaningful way prior to February 20 about the proposed partnership;
- Study Team report misinterpreted
  - Dean Switzer's interpretation of the ST report in some instances is inconsistent with the ST's intent and understanding;

Faculty Senate  
considers proposal

- The Faculty Senate met on February 25, 2002, and stated the proposal to close grades 10-12 at MPLS and any similar proposal should proceed through appropriate procedures for curricular change;
- The Faculty Senate, at this same meeting, forwarded the administration's proposal on the MPLS to the Council on Teacher Education with a request for recommendations by December 2002, stated that specific and concrete curricular proposals related to the Council's recommendations should be prepared for review in the regular curricular review cycle, and stated regret for how this proposal was handled;

President says not  
curricular

- In a meeting on March 4, President Koob indicated the proposal to close MPLS grades 10-12 was not a curricular change;
- The plan to close MPLS grades 10-12 is proceeding without the support of the overall University faculty and community;
- The entire MPLS is now at risk of catastrophic failure; and
- MPLS is unique and not like every other school.

Faculty doesn't  
support plan

- The MPLSPTP asks that the Board enter a Declaratory Order –
  - Declaring the UNI administration decision in this matter is inherently curricular in nature;
  - Requiring the University administration to follow traditional curricular development process to affect the proposed change;
  - Prohibiting any change to the current laboratory school teacher education model unless and until the University can demonstrate with acceptable and sufficient data and research that another model would serve the Mission of the University as it related to teacher education; and
  - Affirming that the Board and the University administration shall maintain and support the present laboratory school teacher education model unless and until the University can demonstrate with acceptable and sufficient data research that another model would serve the mission of the University as it relates to teacher education.

Reasons petitioner  
wants Declaratory  
Order

Petitioner wants 3  
questions answered

- The application of specific statutes, rules, policies, decisions, and orders have not been appropriately applied to this issue;
- The MPLSPTP wants the Board to answer three questions –
  - Whether the closure of grades 10-12 of MPLS and the creation of a professional development school model issue is inherently currently in nature (Exact quote, exact meaning unclear to Board Office);
  - Whether the procedures in place at the University for curricular change must be followed before implementation of any changes from the laboratory school model to a professional development model; and
  - Whether any change to the current laboratory school teacher education model can be made unless and until the University can demonstrate with acceptable and sufficient data and research that another model of teacher education would, in fact, further the mission of the University as it relates to teacher education.

Action on Petition  
by Counsel and  
Board Office:

Board's legal  
counsel determines  
Declaratory Order  
not appropriate

- Ms. Brick's review of the petition resulted in her conclusion that the matter was not appropriate for a Declaratory Order. She observed –
  - The petitioner requests a Declaratory Order “because Dean Switzer’s decision constitutes a major, unprecedented, and unwarranted change in the MPLS structure and MPLSPTP cannot get relief from this decision through any University internal procedures;
  - MPLSPTP also requests that the decision announced by Dean Switzer on February 20, 2002 be invalidated by the Board as procedurally and fundamentally flawed and unsound;
  - The first 15 pages of the Petition which contain the statement of facts are incorporated by reference in the proposed Declaratory Order;
  - The gravamen (essence) of the complaint is Dean Switzer’s announcement of February 20, 2002, stating that the MPLS would close instruction in grades 10-12 beginning in the 2003-04 academic year, with the concurrence of the University administration;
  - Corrected minutes of the Board’s meeting of February 20, 2002, indicate President Koob’s “point of information” to the Board was that there would be conversations with high school faculty concerning the possibility of changing the venue for lab school activities in the Fall of 2003 with savings of as much as \$1 million in direct teaching costs, plus savings in the physical plant;
  - The Iowa Administrative Procedures Act provides for persons to petition an agency for a Declaratory Order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency;
  - The Iowa Code §17A.9(1) requires agencies to adopt rules for such Declaratory Orders, including a description of the circumstances in which the agency will not issue a Declaratory Order;
  - The Board adopted a rule, Iowa Administrative Code (IAC) r. 681—18.9(1) describing when the Board will not issue a Declaratory Order.
  - The Board’s rule at IAC r. 681—18.9(1)(8) provides that a Declaratory Order will not be issued when **“the Petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a decision already made.”**
  - Judicial interpretation of a similar rule found that **“An agency declaratory ruling statute provides a mechanism for requesting an agency determination, rather than for challenging a determination already made.”**
  - The instant Petition clearly falls within this last cited rule and Petitioners request for a Declaratory Order should be denied.

Petition for  
Declaratory Order  
should not seek to  
change decision  
already made

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**Analysis:**

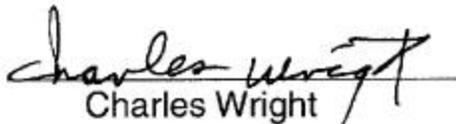
Seek end to closure  
of grades 10-12

Declaratory Order  
not appropriate  
remedy

Adoption of  
recommended  
decision urged

- Petitioners request a Declaratory Order on matters related to the University's decision to close MPLS grades 10-12 in the Fall of 2003.
- Upon analysis of the Petition, the Board's legal counsel, Special Assistant Attorney General Ann Marie Brick, concluded that the request falls within the Board's administrative rules for Declaratory Orders.
- The Board's rule, IAC r. 681 – 18.9(1)(8) provides that a Declaratory Order will not be issued based solely upon prior conduct in an effort to challenge a decision already made and that concept is supported by case law.
- For the above reasons, the Board Office recommends that the Board adopt Attachment A, denying a Declaratory Order, as its decision in this matter.

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Charles Wright

Approved:   
Gregory S. Nichols

BEFORE THE BOARD OF REGENTS, STATE OF IOWA

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MALCOLM PRICE LABORATORY	)	
SCHOOL PARENT TEACHER	)	
PARTNERSHIP,	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>RESPONSE TO PETITION</b>
	)	<b>FOR DECLARATORY ORDER</b>
	)	
THOMAS J. SWITZER, DEAN OF THE	)	
UNIVERSITY OF NORTHERN IOWA	)	
COLLEGE OF EDUCATION,	)	
	)	
Respondent.	)	
	)	
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Pursuant to Iowa Admin. Code r. 681—18.1, the Petitioner, Malcolm Price Laboratory School Parent Teacher Partnership (hereinafter “MPLS—PTP” or “Petitioner”) filed a Petition for a Declaratory Order in which it requests that the Board of Regents answer the following questions: (1) “Whether the closure of grades 10 through 12 at Malcolm Price Laboratory School (hereinafter “MPLS”) and the creation of a professional development school model issue is inherently [sic] currently *curricular* in nature; (2) Whether the procedures in place at the University of Northern Iowa for curricular change must be followed before implementation of any changes from the laboratory school model to a professional development school model; (3) Whether any change to the current laboratory school teacher education model can be made unless and until the University can demonstrate with acceptable and sufficient data and research that another model of teacher education would in fact, further the mission of the University of Northern Iowa as it relates to teacher education.” (Petition at 19-20).

Petitioner requests issuance of this declaratory order “because Dean Switzer’s decision, if implemented as he announced, constitutes a major, unprecedented, and unwarranted change in the MPLS structure. . . . Furthermore, the MPLS PTP emphatically states that it **cannot** obtain adequate or full relief from Dean Switzer’s decision through any internal university procedure. In essence, the MPLS PTP has no internal university remedies . . . .” (Petition at 21) (emphasis in original). Petitioner requests that “the decision, as announced by Dean Switzer on February 20, 2002 should be invalidated by the Board of Regents as procedurally and fundamentally flawed and unsound.” (Petition at 20).

A statement of the facts comprises the first 15 pages of the Petition for Declaratory Order and will not be repeated, but will be incorporated herein by this reference. The gravamen of Petitioner’s complaint to the Board is a February 20, 2002 announcement by Dean Switzer of the University of Northern Iowa College of Education that “beginning with the 2003-2004 academic year, Northern University High School would be closed and that instruction of grades 10 through 12 at MPLS would be moved to Cedar Falls and other area schools.” (Petition at 2). According to a press release issued by Dean Switzer and the College of Education, the decision to close grades 10 through 12 at MPLS was a collective decision made by UNI President Robert Koob, UNI Provost Aaron Podolefsky, Dean Switzer himself, Department of Teaching Head Roger Kueter, with the concurrence of the UNI Cabinet. (Id.).

Earlier on that same day (February 20, 2002), UNI President Koob appeared before this board to share “a point of information”. According to the “corrected” minutes of that meeting, President Koob advised the Board that “[t]hat afternoon, the Dean of the University of Northern

Iowa's College of Education will be talking with the high school faculty of Price Laboratory School about the possibility of changing the venue for lab school activities from the campus school to Cedar Falls Community Schools. The intent is to have conversations, to be completed by the end of the fall semester, and possibly transfer the venue in the Fall of 2003. He expects the proposal may create some tension and Board members may receive telephone calls, particularly from parents. . . . President Koob stated that the proposal would be to transfer the venue of the high school from the campus school to the Cedar Falls High School. University officials hope to retain, as much as possible, the laboratory school function. There would be an approximate \$1,000,000 savings to the University in direct teaching costs. There would also be a reduction in the demand for certain remodeling and on-going maintenance costs, as well as savings associated with extra curricular activities." (Petition Exhibit D).

The Iowa Administrative Procedure Act provides that

"[a]ny person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency.

Iowa Code § 17A.9(1) (2001).

"Each agency shall adopt rules that provide for the form, contents, and filing of petitions for declaratory orders . . . . The rules must describe the classes of circumstances in which the agency will not issue a declaratory order and must be consistent with the public interest and with the general policy of this Chapter to facilitate and encourage agency issuance of reliable advice."

Iowa Code § 17A.9(2) (2001).

The Board of Regents adopted rules providing for the filing of petitions for declaratory orders at Iowa Admin. Code r. 681—18. Rule 18.9(1) describes the classes of circumstances in

which the Board will not issue a declaratory order. One of those circumstances exists in the present case: “the Petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a decision already made.” Iowa Admin. Code r. 681—18.9(1)(8).

The purpose of the declaratory ruling procedure under section 17A.9 is to permit persons to seek formal opinions on the effect of future transactions and to arrange their affairs accordingly. *Women Aware v. Reagen*, 331 N.W.2 88, 92 (Iowa 1983) (citing A. Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rule Making Process*, 60 Iowa L. Rev. 731, 807 (1975). Section 17A.9 contemplates rulings based on purely hypothetical facts, and renders them subject to review. *City of Des Moines v. Public Employment Relations Board*, 275 N.W.2d 753, 758 (Iowa 1979).

In the Petition for Declaratory Ruling before the Board, the proponents of the order request a ruling not on hypothetical facts structured to aid in planning future conduct, but on past actions of certain UNI officials in order to establish their effect. Specifically, Petitioners ask this Board to invalidate the decision announced by Dean Switzer on February 20, 2002 as “procedurally and fundamentally flawed and unsound”. (Petition at 20). The questions Petitioner wants answered do not involve the applicability of one of the Board’s statutes, rules, or orders to a hypothetical set of facts. Instead, Petitioner wants a determination that the past actions of University officials should be declared invalid under a particular statute, rule or order of the Board. Because many of the facts relied upon by Petitioner may be disputed by other

individuals who would be directly or indirectly affected by this Petition for Declaratory Order, the declaratory order is not an appropriate mechanism for the resolution of this dispute. “An agency declaratory ruling statute provides a mechanism for requesting an agency determination, rather than for challenging a determination already made. *Women Aware*, supra at 92 citing *Wisconsin Fertilizer Ass’s v. Karns*, 39 Wis.2d 95, 107, 158 N.W.2d 294, 300 (1968).

**THEREFORE**, for the reasons stated above, and based on Iowa Admin. Code r. 681—18.9(1)(8), the Board of Regents denies Petitioner’s Request for Declaratory Order.

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*On Behalf of the Board of Regents*

\_\_\_\_\_  
*Date*

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**Owen J. Newlin**, *President*

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**Gregory S. Nichols**, *Executive Director*