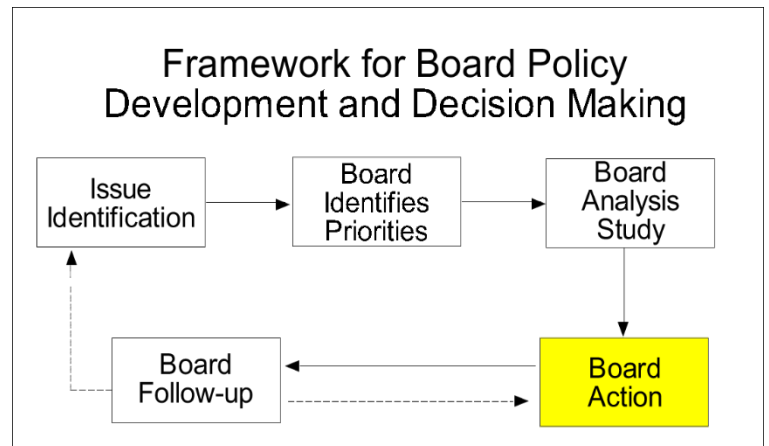


# Iowa State Board of Education

## Executive Summary

March 23, 2023



**Agenda Item:** Appeal Decision, # 5165 – Kirkwood Community College

**State Board Priority:** Preparing Learners for Tomorrow’s Workforce

**State Board Role/Authority:** The State Board has the duty to decide this case under Iowa Code section 290.1.

**Presenter(s):** Thomas A. Mayes, attorney  
Parties and Counsel

**Attachment(s):** Two

**Recommendation:** The Department recommends that the State Board affirm decision of Kirkwood Community College.

**Background:** Appellant received a sanction for violating the Kirkwood Community College academic integrity policy in a computer coding class. After hearing evidence and reviewing the arguments of the parties and counsel, the ALJ recommends affirming the decision of Kirkwood Community College.

IOWA STATE BOARD OF EDUCATION

Cite as \_\_\_\_ D.o.E. App. Dec. \_\_\_\_

Nicholas D. Flood,	)	
	)	
Appellant,	)	Docket # 5165
	)	
vs.	)	
	)	PROPOSED DECISION
Kirkwood Community College,	)	
	)	
Appellee.	)	

Nicholas Flood was a student in a Computer Networking course at Kirkwood Community College in the Spring 2022 semester. The instructor’s course syllabus (Exhibit 1) contains the following information on “academic integrity.”

Academic integrity is an important part of attending any school. If you use any resource to complete an assignment, **even if you think it is general knowledge**, you are expected to use the following citation requirements: ....

If it is from an Internet source (such as a web page), provide the complete web page address (URL) of the web page you used.

Failure to follow these citation requirements will be considered a violation of the Academic Integrity policy and may result in an official report being filed with the college.

(Exhibit 1, emphasis in the original). The instructor made such a report, after concluding that Mr. Flood made impermissible use of material available on-line in answers to three assignments (Exhibit 2). The author of the materials is Cisco.

On March 31, 2022, Kirkwood advised Mr. Flood, by letter, that he violated a portion of Kirkwood’s policy on academic integrity: “(1) Plagiarism and Fabrication -

Paraphrasing: (b) Paraphrasing a significant portion of another individual's work without fundamentally changing the main idea and failing to provide proper credit." (Exhibit 3). Mr. Flood appealed, and Kirkwood granted him a hearing on April 14, 2022 (Exhibit 4). After the hearing, Kirkwood drafted a letter to Mr. Flood, dated April 15, 2022, which advised him of the outcome of his appeal (Exhibit 5); however, it was not sent based on human error (Hearing Testimony). On May 11, 2022, that letter was sent to Mr. Flood by e-mail (Exhibit 6).

Mr. Flood was advised he must complete an online module on "Understanding Academic Integrity" (Exhibits 3, 6). The discipline was not noted on his transcript (Exhibit 3), and he earned an A in the course (Hearing Testimony). Mr. Flood has not taken the online module because he has asserted he should not be required to take it; until he has taken it, Kirkwood will not permit him to enroll in further courses.

Mr. Flood appealed under Iowa Code section 290.1. The Department's review is deferential. *In re Jesse Bachman*, 13 D.o.E. App. Dec. 363 (1996); *see also Gabrilson v. Flynn*, 554 N.W.2d 267, 275 (Iowa 1996). Kirkwood's decision is "prima facie correct." *Board of Directors v. Green*, 259 Iowa 1260, 1266, 147 N.W.2d 854 857 (1967). Mr. Flood has the burden of overcoming that presumption, *see In re GEER II Mental Health Schools Grant*, 30 D.o.E. App. Dec. 159, 160 (2021), by a preponderance of the evidence, *see In re Jesse Bachman*, 13 D.o.E. App. Dec. at 363.

After a contested case hearing on November 10, 2022, and having considered the arguments of the parties and counsel, Kirkwood Community College's decision is affirmed.

Mr. Flood first makes a textual argument regarding Kirkwood's policy. He asserts that his unattributed use of Cisco's materials, which he conceded he used, does not violate the policy because Cisco is not an individual, but a business. This claim must fail because Kirkwood's code of conduct is entitled to a reasonable construction. "School rules need not be drawn with legal precision, but we should not have to wonder about their intent and scope." *Green Mountain Indep. Sch. Dist.*, 4 D.P.I. App. Dec. 242, 249 (1986). In this matter, we have no question that Kirkwood's policy prohibits the conduct that occurred here. The thrust of the policy is that students may not use as their own the work of another without attribution. Here, Mr. Flood did. Educational institutions are given some latitude in drafting their rules. *See, e.g., Woodis v. Westark Cmty. Coll.*, 10 F.3d 435, 438 (8th Cir. 1998) (quoting *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 686 (1986) ("Given the school's need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process, the school disciplinary rules need not be as detailed as a criminal code which imposes criminal sanctions.")). Restricting the application of this policy to works authored only by individuals would be absurd, and the law does not require such a result.

Mr. Flood's argument is functionally a void-for-vagueness argument. His conduct and the challenged policy does not implicate any fundamental right or constitutionally protected conduct. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (education not a fundamental right under the Fourteenth Amendment); *Brown v. Li*, 308 F.3d 939 (9th Cir. 2002) (academic dishonesty is not protected by the

First Amendment). Thus, his challenge to the policy is based on the particular facts of the policy as applied to him. First, he was repeatedly warned in the syllabus, in conversations with his instructor, in academic integrity quizzes as part of the Computer Networking series of courses, and in dialogues between Kirkwood staff and his parents, that he must provide citations as required by his instructor. Second, the proposed distinction between individual authors and non-individual authors would make no sense. The policy is designed so that Kirkwood instructors know whether their students “understand the material” (Exhibit 1). According to the instructor, “it is hard for me to know the source of the answer, or if the answer is appropriate, when there is no citation” (Exhibit 2). Allowing students to, without attribution and without penalty, paraphrase works by non-individual authors would undermine the “intent and scope” of the policy. *Green Mountain Indep. Sch. Dist.*, 4 D.P.I. App. Dec. at 249. Third, any group authorship is, of necessity, the authorship of a collective of individuals. Given the “intent and scope” of the policy, *id.*, restricting it to works by individuals would frustrate its purpose. *See, e.g.*, Restatement (Second) of Contracts, § 202 cmt. d (1981) (“To fit the immediate verbal context or the more remote total context particular words or punctuation may be disregarded or supplied; clerical or grammatical errors may be corrected; singular may be treated as plural or plural as singular.”); *see also* Iowa Code 4.1(17). Fourth, this would undermine Kirkwood’s mission to prepare students for the further education and employment, where, in general, following rules is an expectation and where there may consequences for failure to follow rules and norms regarding citation and attribution of sources. *See, e.g.*, *Iowa Supreme Court Bd. of Professional Ethics*

*& Conduct v. Lane*, 642 N.W.2d 296 (Iowa 2002) (attorney disciplined for plagiarism in a trial brief).

Mr. Flood also asserts that the materials he used without attribution are “open source,” so he may use them without permission. Whether he may use open source materials without permission (intellectual property rights) is a separate question from whether he may permissibly use them without attribution (academic integrity policy). We cannot determine a policy that would require open source materials to be cited is substantially unreasonable. *In re Expulsion of Student A.*, 27 D.o.E. App. Dec. 726 (2016).

Mr. Flood also asserts that other institutions of higher education have different academic integrity policies and he should, in effect, be held to those different and better policies. Whether a different policy might be better is not before the State Board. The sole question is whether Kirkwood’s policy is good enough. Kirkwood’s policy is not the result of a “total absence of reason.” *Sioux City Cmty. Sch. Dist.*, 7 D.o.E. App. Dec. 137, 142 (1987). It is permissible; therefore, it is of no legal import that another policy might be “better.”

Mr. Flood also argues that he should not be required to cite information that is common knowledge. The syllabus specifically states, and emphatically so, that citation to such material is required. This decision is within the zone of reasonableness. We cannot state that this requirement totally lacks reason. *Id.* For that reason, we refuse to set aside this requirement.

Mr. Flood also challenges the procedures used by Kirkwood, including the fact that he did not get a specific written decision identifying who voted and how. We

conclude that Kirkwood's process was permissible in light of the sanction at issue: a notation that did not appear on Mr. Flood's transcript and which required him to complete an online short course on academic integrity. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319 (1976). Mr. Flood also asserts that the brief delay in receiving notice, due to human error on Kirkwood's part, entitles him to relief because his ability to file his appeal was delayed. Mr. Flood had an appeal under Iowa Code chapter 290.1, which was timely based on when he received notice from Kirkwood. Furthermore, any delay that he sustained is harmless because his appeal was without legal merit and he would not have obtained relief in any event.

We have considered all issues and defenses presented, whether or not discussed in this decision. It is recommended that the May 11, 2022, decision of Kirkwood Community College be AFFIRMED.

There are no costs to tax.

This proposed decision will be presented to the State Board of Education at its regularly scheduled meeting on March 23, 2023. The State Board will review this proposed decision based on the record made and the post-hearing briefs. The parties are able to present arguments during the public comment period on the Board's agenda. The Board's presiding officer may also allow oral argument during its deliberations. If oral argument is allowed, the Appellants are allotted seven minutes, thirty seconds in total and the Appellee is allotted seven minutes, thirty seconds.

If either party desires additional proceedings pursuant to the Department's chapter 6, the party or counsel may notify the undersigned and this matter will be rescheduled for later State Board consideration.

Done on February 1, 2023.

Thomas A. Mayes  
Administrative Law Judge

Copies to: Parties  
Mark Zaiger, Counsel for Appellee



IOWA DEPARTMENT OF EDUCATION  
(cite as \_\_\_\_\_ D.o.E. App. Dec. \_\_\_\_\_)

Nicholas D. Flood, )  
 )  
Appellant, ) Docket # 5165  
 )  
vs. )  
 )  
Kirkwood Community College, ) PROPOSED DECISION  
 )  
Appellee. )

After due consideration by the State Board of Education, the proposed decision in this matter is

\_\_\_\_\_ AFFIRMED.

\_\_\_\_\_ OTHER:

**This is final agency action in a contested case proceeding.**

**Any party that disagrees with the Department's decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. Any petition for judicial review must be filed within thirty days of this action, or within thirty days of any petition for rehearing being denied or deemed denied.**

Dated: \_\_\_\_\_, 2023

Iowa State Board of Education, by:

John Robbins, President