Maryland Public Employee Relations Board
45 Calvert Street, Room 102
Annapolis, MD 21401
(410) 260-7291

In the Matter of:	*	
Damani Ellington,	*	
Charging Party,	*	
v.	*	**PERB ULP 2026-19**
Baltimore City Board of School Commissioners,	*	
Respondent.	*	

DECISION AND ORDER

Procedural Background

On December 16, 2025, Damani Ellington (Charging Party or Ellington) filed an unfair labor practice charge with the Public Employee Relations Board (PERB or the Board) against the Baltimore City Board of School Commissioners (BCBSC or the Respondent). Ellington alleges that BCBSC retaliated against him following his engagement in protected concerted activity by way of recommending he be terminated from employment. BCBSC responded to Ellington's charge on January 5, 2026.

Factual Background

Ellington is employed[1] as a 6th grade science teacher at KIPP Ujima Village Academy (KIPP) within the BCBSC system and has been employed by BCBSC since 1997. On May 15, 2025, Ellington filed an unfair labor practice charge with PERB relating to alleged discrimination – in the form of less favorable performance evaluations and his placement on an Academy Action

[1] As discussed below, Ellington is currently suspended without pay pending final determination from an arbitrator relating to BCBSC's recommendation to terminate Ellington's employment.

Plan – following his engagement in protected concerted activity.[2] Counsel for BCBSC was copied on this May 15 email and PERB submitted its processing letter to BCBSC on May 22, 2025.

On May 16, 2025, Ellington received an email from Mr. Gerry Grant, Senior Labor Specialist in the Office of Human Capital for BCBSC, which contained a letter scheduling a *Loudermill* hearing[3] for May 21, 2025. This *Loudermill* hearing stemmed from KIPP Chief Academic Officer, Natalia Adamson, receiving, on April 9, 2025, a complaint from the parent of an eighth-grade student (referred to herein as "F.H.") who Ellington had taught two years earlier, when F.H. was in sixth grade. The parent reported that Ellington had, a few months previously, given F.H. a pair of expensive personalized Apple Airpods that were contained in a case with the student's name monogrammed on the top.[4]

The parent made this report out of concern that such an expensive gift could potentially be seen as improper favoritism or "grooming" for another inappropriate purpose, since Ellington had not given such a gift to any of his other students. Prior to giving the gift to F.H., Ellington had asked permission from F.H.'s mother to give the gift. He, however, did not specify what the gift would be and F.H.'s mother, assuming the gift would be something small and/or something that would be given to a large group of students, gave her consent.

Following receipt of the parent's complaint on April 9, Adamson and KIPP Principal, Ms. Davalyn Cunningham, commenced an investigation into the allegations and spoke with multiple individuals, including Ellington, F.H., F.H.'s mother, and a school guidance counselor, Evony Withers, who Ellington had spoken to briefly regarding the gift. Specifically, Withers stated that in December 2024, Ellington asked her opinion about giving F.H. a Christmas/graduation gift and informed her that he wished to obtain permission from F.H.'s mother prior to doing so. Withers stated she thought this was a nice and thoughtful gesture, and agreed, when asked by Ellington, to witness the conversation between Ellington and F.H.'s mother. Ellington and Withers awaited F.H's mother's arrival during dismissal and Withers witnessed Ellington approach F.H.'s mother, ask for consent to the gift, and saw F.H's mother "appear[ ] to give her approval." Thus, on the last day of school before 2024 winter break, Ellington gave the personalized Airpods to F.H. in Withers office, in the presence of several other students.

KIPP administrators also discussed this matter with F.H., who stated that Ellington had not said anything inappropriate to her or engaged in anything inappropriate physically. F.H. recounted that she often – almost daily – visited Ellington's classroom before lunch to get a soda.

Adamson and Cunningham discussed this matter with Ellington on April 10, 2025, in the presence of the school's union building representative. Ellington admitted to giving the Airpods to

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[2] This Board ultimately dismissed Ellington's May 15 charge for lack of a causal relationship between his protected activity and the adverse actions taken by BCBSC. See Ellington v. Baltimore City Public Schools, PERB ULP 2025-38 (2025).

[3] See Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

[4] According to the respondent, new Airpods generally sell between $100-$250.

F.H. following his receipt of her mother's permission to do so. Ellington stated that F.H. had previously been picked on and that F.H. was a "good kid," which led to him wanting to get her a gift in advance of the coming graduation. With permission from F.H.'s mother, Ellington did not believe the gift to be an issue. Ellington further stated that he had not bought other students this type of gift, although he often gives many students soda, snacks and pizza.

The *Loudermill* hearing commenced on May 21, 2025. One main point of concern was Ellington's potential violation of BCBSC Board Policy entitled "Staff Conduct with Students," known as Board Policy GBEBB, as well as the BCBSC Employee Handbook. Specifically, Board Policy GBEBB provides that "staff must establish appropriate personal boundaries with students and must not engage in any behavior that could reasonably lead to even the appearance of impropriety." Further, Board Policy GBEBB lists, "accepting or giving inappropriate personal gifts" as an example of "improper fraternization/behavior" with students. Additionally, Board Policy GBEBB states that staff are prohibited from engaging in inappropriate conduct with students, even if such conduct does not meet the definitions as laid out previously in the Policy, and provides a list of "do nots" that are intended to be illustrative and non-exhaustive. One of the examples provided is that staff should not "give gifts or provide money to an individual student without prior approval from a school administrator." Continuing, the BCBSC Employee Handbook provides that the school "considers certain misconduct to be serious. In instances in which employees are found to have engaged in such conduct, corrective action will be taken, up to and including termination of employment. This action may not necessarily be preceded by a warning." In an example of what might constitute "serious" misconduct, the Handbook points to Board Policy GBEBB as well as an earlier section of the Handbook which states that staff are not to "give gifts or provide money to an individual student without prior approval from a school administrator."

At the *Loudermill* hearing, Hearing Officer Grant found that Ellington willfully violated Board Policy GBEBB as Ellington "gave no credible justification for giving one particular female student who he had taught two years previously an expensive pair of personalized [Airpods]. He did not seek or receive permission from a school administrator to provide such a gift, as is required by the policy. While he claimed to have spoken to a school counselor, the counselor was a colleague, not an administrator." On the same day of the *Loudermill* hearing, Grant sent Ellington an additional letter notifying him he was being placed on administrative leave with pay pending the issuance of a formal statement of charges against him. The letter states, in pertinent part: "Serious allegations have been made that call into question your suitability to perform your duties at Baltimore City Public Schools. The nature and severity of these allegations necessitate your assignment being modified pending a final recommendation following your *Loudermill* hearing."

On June 17, 2025, after Grant's termination recommendation was approved by the CEO, Grant issued a letter to Ellington containing a Statement of Charges recommending that he be terminated due to insubordination, willful neglect of duty, and misconduct in office. The Statement of Charges stated: "Mr. Ellington had no explanation why any reasonable adult would think it was

appropriate in any sense to give any student such an expensive and personal gift that was neither education or an instructional learning tool."

Grant testified, via sworn affidavit, that he had no knowledge of Ellington's previous filings with the PERB either prior to conducting the *Loudermill* hearing or recommending Ellington's termination from employment. Grant clarified his decision to recommend termination was based solely on Ellington's "inappropriate conduct in providing an expensive, personalized gift to a student without the permission of school administration in violation of Policy GBEBB."

On July 1, 2025, BCBSC suspended Ellington without pay. Following a request from Ellington's attorney and pursuant to relevant law, an arbitration was held on December 19, 2025, relating to Ellington's suspension and recommended dismissal. The parties expect the outcome of the arbitration hearing to be determined by the arbitrator in the coming months.

Positions of the Parties

Charging Party

Ellington maintains that BCBSC recommended he be terminated from his employment as a means of discrimination under Md. Code, State Gov't § 22-206(a)(5), which provides that it is an unfair labor practice for public employers to discriminate or discharge a public employee due to the participation in filing a complaint in matters arising under the Public Employee Relations Act (PERA). Ellington claims his suspension and termination recommendation were solely in response to his previous filing of a charge with PERB on May 15, 2025.

Respondent

BCBSC principally argues that Ellington has not established a *prima facie* case of retaliation because he cannot demonstrate that the person who recommended his termination, Grant, knew that Ellington had filed his earlier PERB charge at the time such a recommendation was made. However, even if Grant were to have known about the earlier charge, BCBSC claims the same decision to recommend Ellington's termination would have been made due to his "egregious and inexcusable failure to follow [BCBSC] policy."

In support of its argument, BCBSC makes reference to the NLRB's *Wright Line* test utilized when considering whether an employer took a negative employment action because the employee engaged in protected concerted activity. See Wright Line, 251 NLRB 1083 (1980). Under the *Wright Line* test, the employee must show by a preponderance of the evidence that: (1) the employee was engaged in protected activity; (2) the employer was aware of the activity; and (3) the activity was a substantial or motivating reason for the employer's action. See id. BCBSC cites an additional NLRB case which clarified that, under *Wright Line*, it is not sufficient to show that the employer had anti-union animus, but that "the evidence must be sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." *Quoting* Tschiggfrie Properties, Ltd., 368 NLRB No. 120 (2019).

BCBSC continues by stating that the presence of all three factors is enough to establish a *prima facie* case that the adverse employment action was discriminatory, but the employer can rebut the evidence by showing that it would have discharged the employee even "in the absence

of the protected conduct." *Quoting* Wright Line, 251 NLRB at 1089. The factfinder may then find that the employer's proffered explanation is an excuse, rather than a reason, and may infer a discriminatory motive based on direct or circumstantial evidence. *Citing* Mondelez Global, LLC v. N.L.R.B., 5 F. 4th 759, 769-770 (7th Cir. 2021).

Given the above, BCBSC argues that multiple aspects of the *Wright Line* test have not been met in this matter, most notably the fact that Grant was unaware of Ellington's May 15, 2025, charge filed with PERB at the time of the *Loudermill* hearing or at the time Grant recommended Ellington be terminated from his position. However, even if Grant were aware of Ellington's charge, BCBSC contends the same decision to recommend termination would have been reached given Ellington's breach of BCBSC policy. Relevant policies Ellington violated, according to BCBSC, include: (1) maintaining a professional and ethical relationship with students that is conducive to an effective and safe learning environment; (2) a requirement that "staff must establish appropriate personal boundaries with students and must not engage in any behavior that could reasonably lead to even the appearance of impropriety;" and (3) a requirement that staff are not to "give gifts or provide money to an individual student without prior approval from a school administrator."

Here, Ellington does not dispute that he gave personalized Airpods to an eighth-grade student whom he had not taught in two years. By so doing, according to BCBSC, Ellington violated the trust placed in him as a teacher and created at least the appearance of impropriety, in violation of school policy. Ellington's "egregious and inexcusable failure to follow" school policy prompted F.H.'s mother to contact KIPP administration with her concerns, and constitutes a legitimate, non-pretextual reason for recommending Ellington's termination. As Ellington has not shown that BCBSC took adverse employment action against him because of his engagement in protected activity, BCBSC contends it has not committed an unfair labor practice in this matter.

Analysis

BCBSC is a public employer subject to PERA, pursuant to MD Code, State Gov't § 22-101(i) and Md. Code, Education § 6-401(f). Ellington is a public employee subject to PERA, pursuant to Md. Code, State Gov't § 22-101(h) and Md. Code, Education § 6-401(e)(1). PERB has the authority to investigate and act on unfair labor practice complaints pursuant to Md. Code, State Gov't § 22-306(b)(4).

MD Code, State Gov't § 22-201(a)(1) provides that employees of a public employer have the right to engage in concerted activities for the purposes of mutual aid or protection. Relatedly, MD Code, State Gov't § 22-206(a)(1) and (5) state that it is an unfair labor practice for a public employer to interfere with, restrain, or coerce employees in the exercise of their rights, while also stating it is an unfair labor practice for public employers to discharge or discriminate against an employee due to their signing or filing of an affidavit, petition, or complaint, or giving information or testimony in connection with matters under PERA.

PERB has recently adopted the NLRB's *Wright Line* approach in reviewing charges of alleged discrimination based on protected concerted activity. See Ellington v. Baltimore City Public Schools, PERB ULP 2025-38 (2025). Under *Wright Line*, to establish a prima facie case of discrimination or retaliation by the employer in response to protected concerted activity, the charging party must establish: (1) engagement in union or other protected concerted activity by the employee; (2) employer knowledge of that activity; and (3) animus toward the protected

activity as well as a causal connection between the alleged discriminatory action and the protected activity. See Wright Line, 251 NLRB 1083 (1980). See also Intertape Polymer Corp., 372 NLRB 133 (2023). Courts and the NLRB have long held that animus and a causal connection may be "inferred from circumstantial evidence based on the record as a whole." See *id,* citing Overnite Transportation Co., 335 NLRB 372 (2001).

Here, while element (1) of the *Wright Line* analysis has been met – as Ellington's May 15, 2025, charge filed with this Board constitutes protected activity – Ellington has failed to establish support for elements (2) and (3) of the test. Specifically, Grant has testified that he had no knowledge of Ellington's May 15 filing at the time of the *Loudermill* hearing or at the time he recommended Ellington's employment be terminated. While counsel for BCBSC was copied on the May 15 filing, no indication has been made that Grant was notified of this fact prior to his sending notice of the Loudermill hearing on May 16, 2025. In fact, administrators at KIPP had initiated an investigation into this matter after receiving a complaint from F.H.'s parent on April 9, 2025, over a month prior to Ellington's initial charge.

However, even if Ellington were to have established enough support for a finding in favor of prong (2), insufficient evidence exists which establishes the requisite causal connection between the adverse employment action taken by BCBSC and Ellington's engagement in protected concerted activity. Rather, BCBSC has provided ample evidence refuting this claim and has maintained that its recommendation to terminate Ellington's employment stemmed from Ellington's serious misconduct and deliberate breach of BCBSC policy.

In sum, we find Ellington has failed to provide a sufficient factual basis to support his claim that the actions taken by BCBSC were causally related to his previous engagement in protected concerted activity. Instead, the evidence suggests that BCBSC recommended Ellington's termination independently, and without knowledge, of Ellington's previous filings with this Board. Therefore, Ellington has failed to establish probable cause that BCBSC committed an unfair labor practice. Accordingly, Ellington's charge is dismissed.

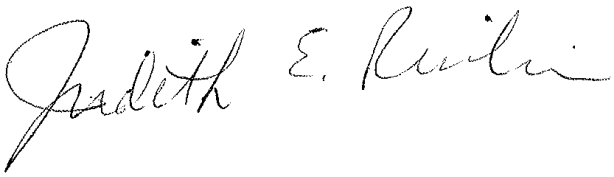
Order

IT IS HEREBY ORDERED THAT THE CHARGE IN PERB ULP 2026-19 IS DISMISSED.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD:

Lafe E. Solomon, Chair

Harriet E. Cooperman, Member



Judith E. Rivlin, Member

Jennifer Epps, Member

Annapolis, MD

Issue Date: February 6, 2026

Appeal Rights

Any party aggrieved by this action of the Board may seek judicial review in accordance with Title 10 of the State Government Article, Annotated Code of Maryland, Section 10-222, and Maryland Rules, 7-201 et. seq.