

INVESTIGATIVE DETERMINATION

File: Cara Halgren, OAH File No. 20210178

Date: July 30, 2021

[1] I have reviewed and based my conclusions upon the Investigative Report prepared by investigators Kathryn M. Nash and Emily E. Mawer of trainedED.

Allegations

[2] On January 29, 2021, Eric Plummer (Plummer) filed an Equal Opportunity and Title IX Formal Complaint against Cara Halgren (Halgren). Plummer alleges Halgren discriminated and harassed him due to his political affiliations. Plummer's complaint states that after Halgren learned that Plummer voted for Donald Trump in the 2016 presidential election, Halgren treated Plummer differently. Specifically, Plummer alleges that Halgren quit having breakfast meetings with Plummer and treated him differently professionally. Plummer alleges that this change in demeanor "severely impacted" his ability to work with the Student Affairs Division and created a hostile work environment.

[3] The investigation of Plummer's complaint addressed the following incidences/topics: University Police Department (UPD) meeting with Housing; Parent Orientation; UPD Social Media account; Plummer's presence on campus; COVID townhall; COVID discussions with fraternities and sororities; open records request; text messages between Halgren and Cassie Gerhardt¹ (Gerhardt); BIT meeting; Diversity and Inclusion Task Force; COVID vaccine distribution; January 21-22, 2021 pandemic team discussion; criminal history background check discussions; and a January 28, 2021 meeting with University President Andrew Armacost² (Armacost).

¹ Gerhardt is an Associate Vice President of Student Affairs and Diversity and Associate Dean of Students. Gerhardt has worked in the Student Affairs department for 19 years. Gerhardt has been reporting directly to Halgren since the spring of 2012.

² Armacost has been President of the University of North Dakota since June 1, 2020. From mid-January 2020 to June 1, 2020, Armacost was a part-time employee of the University. Armacost is currently Halgren's supervisor.

UND Policies Alleged to Have Been Violated

[4] The University of North Dakota (UND) Discrimination and Harassment Policy prohibits discrimination and harassment on the basis of race, color, national origin, religion, sex, age, disability, sexual orientation, gender identity, genetic information, pregnancy, marital or parental status, veteran's status, political belief or affiliation, or any other status protected by law or UND/North Dakota University System/State Board of Higher Education Policy. The policy further prohibits retaliation, and such action will be cause for disciplinary action.

[5] The Policy defines harassment as:

Unwelcome and offensive conduct that is based upon an individual or group's actual or perceived membership in a protected class and creates a hostile environment, as defined by this policy. Harassment may include, but is not limited to, the following when it creates a hostile environment: offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work or academic performance.

[6] The Policy defines hostile environment as:

Unwelcome conduct determined by a reasonable person to be so severe, persistent, or pervasive, and objectively offensive that it interferes with or limits the ability of an individual or group to participate in or benefit from university-sponsored programs or activities, including employment and pursuits. A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. In evaluating whether a hostile environment exists, the university will consider the totality of known circumstances, including, but not limited to:

- The degree to which the conduct affected one or more individuals' education or employment;
- The type, frequency and duration of the conduct;
- Whether the conduct was physically threatening;
- The identity of and relationship between the respondent and the complainant;
- The number of individuals involved;
- Whether the conduct arose in the context of other discriminatory conduct; and
- Whether the conduct unreasonably interfered with the complainant's educational or work performance and/or university programs or activities.

[7] The Policy defines discrimination as:

The unfair or unequal treatment of an individual or group based upon the individual or group's actual or perceived membership in a protected class. An adverse action that is motivated by discrimination violates this policy.

[8] The Policy defines adverse action as:

Any act or omission that results in a materially adverse impact on the terms, conditions and privileges of employment, academic pursuits and/or any other university-sponsored activity. An adverse action violates the discrimination and harassment policy when it is motivated by discrimination based on protected class membership, or in retaliation for protected activity. Adverse actions are not limited to hiring, firing, promotion, demotion, selection for admission, or assigned grades. Other actions can adversely affect terms, conditions and benefits of employment, academic pursuits or other university-sponsored activity.

Analysis

[9] The question to be determined is whether Halgren discriminated or harassed Plummer after learning he voted for Donald Trump in the 2016 election in violation of UND discrimination and harassment policy.

Standard of Evidence

[10] The standard of evidence used for all determinations is a preponderance of evidence, meaning that it is more likely than not that a policy violation occurred.

Findings of Fact

[11] Plummer worked at the University Police Department (UPD) from October 2012 until he resigned in February 2021. From October 15, 2012 to April 2014, Plummer held the position of Director of Public Safety and Chief of Police. From April 2014 to his resignation, he held the position of Associate Vice President for Safety and Chief of Police.

[12] Halgren has worked at Student Affairs and Diversity since 2006. From 2006 to 2010, she held the position of Associate Dean of Students; from 2011 to May 2017, she held the position of Dean of Students/Associate Vice President; in May 2017 she became the Interim Vice President of Student Affairs and Diversity; and in November 2017 she became the permanent Vice President of Student Affairs and Diversity.

[13] UPD and Student Affairs are divisions that work closely together but have not always had a good working relationship. After Plummer started in 2012, the relationship

between the two divisions improved and they worked collaboratively on many issues. From 2012 to late 2016/early 2017, Plummer and Halgren worked closely and by all accounts had a very positive working relationship.

[14] Part of the collaboration between Plummer and Halgren included meeting regularly for breakfast to informally discuss various work issues. Plummer and Halgren would meet either every Friday, or every other Friday, for breakfast off campus at the Northside Café before working hours. While there may have been some personal, non-work conversations, most of their discussions addressed work issues.

[15] At one of the breakfast meetings after the 2016 election,³ Halgren asked Plummer who he voted for in the 2016 Presidential election.⁴ While Plummer was reluctant to discuss politics with a work colleague, he told Halgren he voted for Trump. Plummer reported the conversation made him uncomfortable. Plummer stated that Halgren had a negative reaction to his answer. Halgren admitted she asked Plummer who he voted for because she was “curious in terms of what he saw.” *Investigation Report*, p. 23. Halgren could not recall definitively if she shared this information with colleagues but thought it was possible. As to why she may have shared that information, Halgren reported, “there are times when things come up and they try to think about perspectives and why people think the way they do.”⁵ *Id.*

[16] Over the course of the next few years, the relationship between Plummer and Halgren deteriorated. Plummer believes the change in the relationship stemmed back to the conversation regarding the election and Halgren learning he voted for Trump.

³ While there is no dispute this conversation occurred, the exact date of the conversation is unknown.

⁴ Lieutenant Daniel Weigel serves as the Investigations Commander at UPD. Lieutenant Weigel reported that after the 2016 election Halgren asked him who he voted for and why. Lieutenant Weigel further reported that he did not notice a change in his relationship with Halgren after this conversation.

⁵ Halgren’s statement that she used political ideology to understand other people was bolstered by a June 11, 2019 text message conversation Halgren had with Gerhardt. The messages were regarding Bob Boyd and his plan to vacate the American Indian Center, which was a plan Halgren and Gerhardt did not agree with. Halgren responded in one message, “And how much do you want to bet he voted for [Trump]?” *Investigation Report*, p. 25.

Plummer stated that following the conversation, Halgren's tone with Plummer changed and they did not have the same type of conversations. Plummer described Halgren as "little bit more distant." *Investigation Report*, p. 26. Plummer said responses from Halgren were short and "very terse." *Id.* Halgren alleges she never treated anyone adversely due to his or her political beliefs and that she works with many people who do not share her political views.

[17] Halgren points to other factors that caused the relationship to change. First, she was promoted to the Vice President position, interim in May 2017 and permanent in November 2017. Secondly, Halgren reported that she no longer wanted to have a personal relationship with Plummer but felt that decision had no effect on the working relationship. Third, Halgren reported that certain work incidences changed her opinion of Plummer because of what she perceived as "inconsistencies between what [Plummer] said and what [Plummer] did." *Investigation Report*, p. 66, attach. 24. The incidences specified were: certain UPD messaging on Facebook and social media which Halgren did not believe was appropriate; a report that Plummer allegedly allowed plainclothes officers to pose as students in the Greek neighborhood; a complaint by the Delta Gamma sorority regarding UPD's response to a break-in; UPD's use of the Wellness Center while closed; and conversations related to the Behavioral Intervention Team (BIT) and criminal history background checks during the admission process. Specifically regarding the breakfast meetings, Halgren stated her personal morning schedule changed which made it difficult for her to make time in the mornings to meet. Secondly, Halgren reported she wanted to "keep our relationship confined to our work setting and that I didn't want to spend personal time with him because I was uncomfortable doing so." *Investigation Report*, p. 31. Halgren did not explain why she was no longer comfortable being around Plummer.

[18] The conflict between Plummer and Halgren culminated during a January 28, 2021 meeting with Armacost and Jed Shivers⁶ (Shivers).

January 28, 2021 meeting:

[19] Shivers informed Armacost that Plummer was considering a job offer from Radford University and requested Armacost speak with Plummer to see if Plummer could be

⁶ Shivers has been the Vice President for Finance and Operations since May 2018. Shivers is Plummer's supervisor.

convinced to stay. According to Shivers, a major consideration was Plummer's working relationship with Halgren. Shivers described it as "rapidly deteriorating."

[20] Armacost arranged a Zoom meeting with Shivers, Halgren, and Plummer. Armacost spoke individually with Plummer and Halgren about the purpose of the meeting and both consented to participate. Armacost thought Gerhardt should attend but Halgren requested she not be involved. The meeting occurred on January 28, 2021.

[21] Armacost opened the meeting with his observations about Plummer and Halgren's fraying working relationship. Armacost reported that both Plummer and Halgren acknowledged that the change in the relationship occurred after the discussion of the 2016 election. Plummer summarized his concerns and his disappointment in Halgren's leadership. Halgren also expressed her frustrations and rejected the allegation that it was her leadership that was causing the issues. Halgren stated that their political differences made it impossible for her to work with him as she had in the past and mentioned the breakfast conversation regarding the election. Shivers recalled Halgren saying, "after learning that, I, I just didn't think I could work with [Plummer] anymore." *Investigation Report*, p. 12. Armacost later asked Halgren to clarify her comment and Halgren repeated "the statement that her political differences prevented her from working effectively with Plummer and said, 'I can't change the way I feel just to get along.'" *Investigation Report*, p. 11. Plummer expressed outrage over Halgren's statement and stated he planned to resign his position. Halgren replied by stating, "I'm not going to take responsibility for your decision to resign." *Id.*

[22] Following the meeting, Halgren sent Plummer a text message that stated, "Eric. I meant what I said. It feels horrible right now but I'd also hate for this to be the way it ends. We both deserve better than that. I'd like to propose meeting at north side and drawing up a MOU for us." *Investigation Report*, Attach. 7. Plummer did not respond to Halgren's text.

[23] In her response to this complaint, Halgren stated that due to previous trauma she has experienced she felt ambushed and angry by Plummer's statements about her leadership and that the conversation was much more confrontational than she had anticipated. Halgren stated she was afraid to offer her personal opinions. Halgren stated that Plummer's comment about resigning was designed to blame her and that "his comments towards me were emotionally abusive and his way of trying to manipulate me

and show me that if he did something bad to hurt me (or UND by quitting) it would be my fault." *Investigation Report*, Attach. 9, p. 5. Halgren stated that she did not have the courage to state that she only wanted a professional relationship with Plummer. *Investigation Report*, attach. 9, p. 4. Halgren further explained that she believed using the rationale of political beliefs was "more gentle" than her true reasons. *Id.* Halgren stated "I wanted to protect myself by not hurting his feelings." *Id.*

[24] Regarding the breakfast meetings, Halgren stated, "I wanted to keep our relationship confined to our work setting and that I didn't want to spend personal time with him because I was uncomfortable doing so." *Id.* at p. 6. Halgren did not explain why she was no longer comfortable being around Plummer. She reported to the investigators that, "I didn't know exactly why I wanted to keep my relationship with Dr. Plummer strictly related to work, but I did and I knew I had to trust that instinct." *Investigation Report*, p. 14.

[25] Halgren met with Armacost two times after the January 28th meeting to discuss her comments. Halgren told Armacost that she did not mean what she actually said and that her personal relationship with Plummer had not changed due to his political beliefs but due her new position as a Vice President.

[26] Halgren pointed to her promotion to Vice President of Student Affairs as one cause of the changed dynamic with Plummer. Halgren stated that she was no longer a peer of Plummer but part of the vice president group. In the University hierarchy, Shivers, Plummer's supervisor, was now Halgren's "peer." Plummer pointed out that despite the change in position, Halgren kept the role of Dean of Students which was a point of contact for him at the Student Affairs department. The investigation shows that Plummer and Halgren had many interactions and contacts following the change in position. By Halgren's own admission, she worked with Plummer on many topics and issues. In her response to the complaint, Halgren lists 10 issues since November 2017 that she worked with Plummer. *Investigation Report*, attach. 9, pp. 2-3.

[27] Halgren reported that she believes her professional relationship with Plummer was "decent." *Investigation Report*, p. 64. Halgren stated that over time "a couple of things happened . . . and then, over the course of time, you think that maybe they're bigger things."

[28] In the collateral third party interviews, some of the staff members of Student Affairs department and UPD expressed concerns that the deteriorating relationship between Plummer and Halgren affected how the department worked together.

Specific Incidences Identified Investigated:

[29] Plummer believes he was “intentionally left out of one of the first COVID-19 related Zoom Town Hall for students.” *Investigation Report*, p. 13. Plummer described himself as “basically the chair” of the pandemic planning and response group. *Id.* at p. 42. Plummer stated he was not invited as a panelist to the COVID-19 townhall for students. Plummer took this as a personal slight and believed that Halgren and Gerhardt intentionally did not include him. Based on the investigation responses, the townhalls were arranged by the University President and various vice presidents. There was no clear indication how panelists were selected. Shivers reported that the Assistant Vice President of Public Safety was involved in many of those decision.

[30] Plummer stated that UPD and Student Affairs used to coordinate for one of the most popular presentations for parent orientation. Plummer stated that over time, Halgren stopped participating, and then Gerhardt stopped participating. Gerhardt then told Plummer the parent programs did not want to include the presentation anymore. Yet, Plummer learned that Student Affairs was continuing with the presentation without UPD. Based on the investigation responses, the presentations for parent orientation changed many times in the recent years; and most recently, specific programming for parents was dropped altogether.

[31] Plummer also noted that he was not invited to discussions about COVID-19 with the University fraternities and sororities. Plummer thought it was “odd” that he was not involved. *Investigation Report*, p. 44. Halgren and Gerhardt reported these discussions occurred at regular monthly meetings that Plummer was not normally involved.

[32] Both Plummer and Halgren specified the UPD’s social media posts as a point of contention. Halgren, admittedly, took offense to some of UPD’s posts which were meant to be comical but Halgren felt perpetuated stereotypes of women and college students. Halgren stated that Plummer’s response to her concern about the posts is one of the events that caused her to change her opinion of Plummer.

[33] Plummer stated that Halgren and Gerhardt took issue with the amount of time Plummer spent off campus. Plummer's time away from campus was spent on outside consulting work. Halgren estimated that Plummer was gone three to four days a month and stated that it affected his ability to be involved with ongoing programming and fostering relationships with the students like he previously did. Shivers reported that he did not believe Plummer's time away from campus affected his ability to lead UPD.

[34] Plummer raised concerns regarding several text message conversations concerning Plummer between Halgren and Gerhardt. The text messages concern specific events at the University and are critical of Plummer's actions. None of the messages mention Plummer's political affiliation or beliefs as a source of the criticism.

[35] Plummer reported disagreements he had with Halgren over BIT. Halgren chaired the BIT before she was named Vice President of Student Affairs. Following her position change, it appears she remained involved with the BIT. There was one incident that was a point of contention. Halgren shared confidential information with a faculty member who was not part of the BIT about a "student of color" who attempted to commit suicide. Plummer raised concerns about revealing confidential information about a student to someone who was not part of the BIT and without consent of the BIT. Plummer said this was something Halgren would have never done in the past and demonstrated the change in her demeanor. Halgren believed she was authorized to consult other faculty if deemed necessary and felt it was appropriate in this situation. While discussing this issue with Halgren, Plummer reported that Halgren stated the BIT was "just a bunch of white people sitting around a table." *Investigation Report*, p. 49. Halgren does not deny making this comment and stated it was poor choice of words to express that she believed the BIT lacks diversity. Other members who were interviewed regarding this incident express concerns that Halgren's actions were outside the normal BIT protocol.

[36] As another example, Plummer stated that volunteers for COVID-19 testing sites were allowed vaccinations ahead of UPD officers. Plummer further stated he saw Gerhardt and Halgren receiving vaccines before vaccines were available to UPD officers. Plummer felt UPD officers had more potential exposure than others who received prioritization. Halgren stated that student health services reports to her but that she was not involved

with determining vaccine priority. Halgren stated she volunteered at some COVID testing sites so was on the list for first access to the vaccine.

[37] Plummer also reported that Halgren and Gerhardt took a “derisive” tone with him during discussions on January 21, 2021 regarding clubs use of University facilities. The investigation report indicates the discussion was very contentious and there was a lot of frustration regarding the approval process. Gerhardt stated that she understood how Plummer could have felt it was directed towards him although it was not intentional.

[38] Plummer reported that changes were made to the process for criminal background checks during a BIT meeting that he did not attend. Plummer was told the process was the same but how the information came to BIT might change. The way the changes were later presented to the President’s executive council by Halgren was not what he understood to be the changes. Shivers reported that it was concerning that Plummer was not consulted on the proposed changes. Halgren reported that she clarified in an email to the executive committee that her comments were her personal opinions and not that of the BIT.

Conclusion as to Policy Violation

[39] The undersigned concludes, by the greater weight of the evidence, that Halgren’s conduct does not constitute “harassment” as defined by University policy. There was no evidence of a repetitive pattern of offensive jokes, slurs, epithets or name callings directed at Plummer, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, or interference with work performance.

[40] The undersigned also concludes, by the greater weight of the evidence, that Halgren’s conduct does not meet the criteria for “hostile environment” as defined by University policy. Halgren’s treatment towards Plummer affected Plummer’s interaction with the Student Affairs department but interacting with Student Affairs was only one aspect of his job and there was no evidence that it prevented him from performing his other work duties.

[41] After thoroughly reviewing the investigation report along with the attached materials, the undersigned concludes, by the greater weight of the evidence, that Halgren discriminated against Plummer due to his political beliefs or assumed political affiliation.

[42] The investigation supports Halgren’s statements that there were many factors that influenced the interactions between Plummer and Halgren since the discussion of the

election. Under the University's policies, an adverse action can have multiple motivating factors and the University may act if one of those factors constitutes harassment or discrimination.

[43] Throughout the investigation of Plummer's complaint, Halgren gave numerous reasons why the relationship changed after 2016. Halgren, admitted she changed the way she chose to interact with Plummer. During the January 28, 2021 meeting, Halgren stated the reason was Plummer's political beliefs. When asked to clarify, she reiterated her concerns with Plummer's political beliefs and that she "could not change the way she feels just to get along." Following the meeting, Halgren sent Plummer a text message to tell him she meant what she said. During the complaint investigation, Halgren stated she did not mean what she said but admitted that her opinion of Plummer had changed, and she changed the way in which she interacted with Plummer. The strained relationship between Halgren and Plummer was supported by the collateral statements taken during the investigation. The election conversation was a turning point in the relationship and by Halgren's own admission, she could not, and did not, treat Plummer the same after learning that he voted for Donald Trump. This was a change in the conditions of Plummer's employment as it negatively affected Plummer's interaction with the Student Affairs department and Halgren who headed the department. This constitutes discrimination based upon a protected class.

Respectfully Submitted,

By: 
Hope L. Hogan
Administrative Law Judge
Office of Administrative Hearings
2911 North 14th Street – Suite 303
Bismarck, North Dakota 58503
Telephone: (701) 328-3200

CERTIFICATE OF SERVICE

The undersigned certifies that the original **INVESTIGATIVE DETERMINATION** was sent by electronic mail and mailed, regular mail, on the ____ day of July 2021, to:

Donna M. Smith, J.D.
Assistant Vice President for Equal Opportunity & Title IX
Title IX/ADA Coordinator
University of North Dakota
Twamley Hall Room 102
264 Centennial Dr Stop 7097
Grand Forks, ND 58202-7097

Hope L. Hogan, Administrative Law Judge



Louise Wetzel