

MEMORANDUM

To: Adam B. Jussel, Director, Student Standards and Accountability

From: Kimberly D. Anderson, Director
Office for Equal Opportunity



Date: July 23, 2014

Subject: Investigation, re: OEO Complaint No. 2014-018

The Washington State University (WSU) Office for Equal Opportunity (OEO), with the Office of Student Standards and Accountability (SSA), commenced an investigation in response to information received from the WSU Department of Residence Life regarding the alleged conduct of Ms. XXXX (Student B), a female WSU undergraduate student. Allegedly, Student B, subjected Mr. XXXX (Student A), a male WSU undergraduate student, to unwanted, nonconsensual sexual contact in the early morning hours of January 26, 2014.

These allegations implicated the WSU Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct, Executive Policy #15 (EP 15), and relevant provisions of the WSU Standards of Conduct for Students, and warranted this investigation. This memorandum summarizes OEO's investigation, provides findings of fact, states a conclusion as to whether EP 15 was violated, and makes a recommendation to SSA regarding further disciplinary proceedings.

Investigators interviewed Student A, Student B, and the following individuals:

1. Ms. XXXX (Student C), a WSU undergraduate student who interacted with Student A and Student B before and after the alleged incident;
2. Mr. XXXX (Student D), a WSU undergraduate student who interacted with Student A and Student B after the alleged incident; and
3. Mr. XXXX (Student E), a WSU undergraduate student who interacted with Student A and Student B before and after the alleged incident.

OEO contacted Ms. XXXX (Student F), a WSU undergraduate student; however, she declined to participate in the investigation.

Investigators reviewed the following documents:

1. Screenshots of text messages exchanged between Student B and her friend on January 26, 2014, which were provided by Student B;
2. Screenshot of Facebook message sent from Student B to Student A on January 26, 2014, which was provided by Student A; and
3. A WSU Department of Residence Life incident report regarding the alleged incident.

Analysis

Student A said that beginning at approximately 9:00-10:00 p.m. on the evening of January 25, 2014, he consumed alcohol and played drinking games with friends, including Student C, Student E, and Student F, in a residence hall room. Student B said she joined the group at approximately 10:30-11:30 p.m. Both Student A and Student B said that they played drinking games with the group for several hours. Student A, Student C and Student E said Student A and Student B remained with the group until approximately 12:00 a.m. Student B said she had stayed with the group playing drinking games until approximately 1:30 a.m., which was inconsistent with the statements of Student A and the other witnesses.

Student A, Student C, and Student E stated that Student A was highly intoxicated due to his having consumed a large amount of alcohol, including most of a bottle of Fireball cinnamon whiskey, which was described as a "standard fifth," and some amount of vodka, which he also consumed "straight from the bottle." Student C and Student E stated that Student A had slurred speech, difficulty balancing, and could not form clear sentences. Student A said he did not have a clear memory of the events of that evening. Student A said that leading up to and during the time the sexual contact occurred, his level of intoxication on a scale from one to ten was a ten; Student C said Student A was at a nine.

Student B said that she "stumbled" and "walked against the wall" leading up to the time sexual contact occurred. She said she consumed a large amount of alcohol and that her level of intoxication was an eight. Student B said she played the drinking game "rage cage" with the group and during the first round she consumed 14 to 15 cups which she estimated to be the equivalent of approximately seven shots of a vodka and Hawaiian punch mixture. She said that Student A had three or four cups during the first round. She said that between rounds she consumed two shots of tequila and two or three "swigs" of Fireball. She said Student A was taking "shorter sips" and "I was taking bigger drinks." She said that during the second round, Student A's friends were giving her "more cups." She said she took three additional shots of Jack Daniel's whiskey, then left the group at approximately 1:30 a.m. to go to the restroom. She said she vomited in the restroom four times for a total of approximately five minutes. She said she had a clear memory of the events of that evening.

Student C, Student D, and Student E all stated that, although they knew Student B had consumed some alcohol, she did not appear to be intoxicated. Student C, Student D and Student E described Student B at a low level of intoxication and not exhibiting signs of intoxication. Student C said Student B joined the group while they were playing the drinking game "beer pong." She said Student B was not drinking at that time but she did see her drink during "rage cage." She said that Student A and Student B were not interacting during the game but Student B moved next to Student A after and began touching his arms. She said she did not see any indication at that point that Student A was interested in Student B.

After Student A and Student B left the group, they both ended up in Student B's residence hall room. Student A said he did not remember how he got to Student B's room, but he did remember her kissing him and asking if he had a condom. Student B said Student A approached her in the hall outside her door and began kissing her. She said she told Student A, "If you want to have sex tonight you should find a condom." Student A and Student B agreed that Student A had left Student B to find a condom. Student C said she saw Student A and Student B talking at the end of the hall before Student A came back to the group and asked for a condom. Student C said that she and others attempted to persuade Student A that he should not engage in sexual activities with Student B because of his level of intoxication.

Student A and Student B agreed that after Student A returned to Student B's room, sexual contact occurred. Student B described this as including her performing "oral sex" on Student A, Student A performing "oral sex" on her, attempting vaginal intercourse, and Student B resuming "oral sex" on Student A. Student B said that Student A and Student B moved into the shower, located in her room, where they again attempted vaginal intercourse and Student B again performed "oral sex" on Student A. Student A said he did not remember the details of the sexual activity but he "knew sex happened." He said he only remembered that he had been on top of her and that she had performed "oral sex" on him. He said he remembered seeing a bag of condoms in Student A's room and that after performing "oral sex" on him, she told him, "Let's go to the shower." He said he recalled Student A performing oral sex on him in the shower and he thought he ejaculated in the shower. Student A said he wanted to leave because he was "really uncomfortable" but Student B told him to wait.

Student C said that while Student A and Student B were in Student B's room, she and Student F attempted to check on Student A by knocking on Student B's door and asking to see him. Student C said that Student B was persistent in attempting to keep Student A from talking with her, however, she stated that Student A did respond and she saw him naked. She said that she knew he lacked the capability to understand what was happening because she knew that he would not have allowed her to see him naked.

Student A and Student B agreed that Student A had asked Student B to find his bottle of Fireball whiskey and she left him alone in her room to look for the bottle. Student A said he had asked her to look for it because he "just wanted her gone." Student C said that while Student A was out of the room, she and Student E knocked on the door and

attempted to contact Student A. Student C and Student E said that as soon as Student B heard her knocking, Student B ran back toward her room. Student E said that Student B said, "Don't ruin this for me."

Student A said that after the sexual contact had occurred he "realiz[ed] [it was] bad and [he] wanted out." He said he "kept trying to leave" but Student B asked him to wait. He said he felt uncomfortable, and he told Student B he had to leave to find his friends. Student A said he left Student B's room and "ended up" in Student C's room and told her what had happened; he said he did not remember if he walked alone to Student C's room or if Student C had found him and escorted him. Student A and Student C said Student B visited Student C's room and requested to see Student A. Student A said he hid in the closet and Student C told Student B he was not in her room. Student A said that while he was hiding in the closet, Student B sent him text messages asking questions about a class and sent him a Facebook message that said, "I miss you."

Student C said that Student B went to her room and told her that Student A had left his cougar card in her room. Student C told her that she would retrieve it for him. Student C said that, on the way to Student B's room, Student C told Student B, "You could get in trouble; this could be considered rape." She said that Student B did not appear to react, and said something to the effect of, "I just want to hang out with [Student A]."
Student C said that Student B was unable to locate Student A's cougar card, and Student C found out later that Student A had his cougar card the entire time.

When speaking with investigators prior to her interview, Student B indicated that she wished to file a counter complaint against Student A. She alleged that she had been very intoxicated at the time of the sexual contact and that Student A had not been as intoxicated as she was. Student B's statements about her level of intoxication and Student A's level of intoxication were not consistent with Student A's, or any of the other witnesses' statements.

Following her interview with investigators, Student B submitted a record of text messages which she exchanged with a friend on the night of the alleged incident. (see attached). Student B sent a text message at 1:10 a.m., in which she stated that she was drunk, at 1:30 a.m. she sent a message informing her friend that she had vomited, and at 3:00 a.m. she sent a message informing her friend that she "slept with a guy and he went to another girls room," and that she gave her "first blowjob." The text messages from Student B to her friend contain unintelligible phrases and several misspelled words. The content and format of the messages support Student B's assertion that she was intoxicated on the night of the alleged incident. However, it is not clear how the timing of the text messages corresponds to the timing of the events of that evening.

Based on the foregoing and the totality of the evidence documented by the investigation, using a standard of "more likely than not," OEO finds:

1. Student A and Student B were both WSU undergraduate students at the time of the incident.

2. Student A's statements to investigators were spontaneous, internally consistent, generally consistent with the statements of witnesses, and did not appear rehearsed. For these reasons, OEO found Student A's statements credible.
3. Student B's statements to investigators were self-serving, at times contradictory, and were inconsistent with the statements of several witnesses. For these reasons, OEO found Student B's statements to be less credible than those of Student A.
4. On the evening of January 25, 2014, Student A consumed alcohol and played drinking games with friends in a residence hall room. Student B later joined the group and also consumed alcohol and played drinking games.
5. Student A consumed a large amount of Fireball whiskey, approximately one-fifth of a gallon and an indeterminate amount of vodka on the evening of January 25, 2014.
6. As a result of his having consumed this alcohol, Student A lacked a clear memory and was unable to provide a clear timeline of events. Consistent with witness statements, Student A had difficulty maintaining balance, slurred his speech, and was unable to form clear sentences.
7. Student B had consumed some alcohol on the evening of January 25, 2014 and was intoxicated. Student B said she had a clear memory of the events of that evening. Witnesses stated that she was walking normally, did not slur her words, and did not display other behavior which could have indicated that she had been intoxicated. Student B's statements about the amount of alcohol she consumed, while supported, in part by the record of text messages she submitted, were inconsistent with the statements of Student C, Student D, and Student E. OEO found insufficient information to determine the amount of alcohol consumed by Student B.
8. At approximately 12:00 a.m., Student B left the residence hall room and walked down the hall; Student A also left the room shortly thereafter.
9. Student A and Student B went to Student B's residence hall room where kissing, oral sexual contact, and attempted vaginal intercourse occurred.
10. Based on findings five through seven above, OEO finds that Student A was much more intoxicated than Student B at the time sexual contact occurred.
11. Student B attempted to isolate Student A several times throughout the night, including: (1) when Student C and Student F knocked on her door to say goodnight but Student B would only crack the door open; (2) when Student C and Student E knocked on Student B's door while Student A was alone in her room and Student B said, "Stop, you're gonna ruin it."; and (3) when Student A left Student B's room, was hiding in Student C's room and sought out Student A in Student C's room. Further Student B also sent Student A a Facebook message at 2:53 a.m. that read, "I miss you," while he was hiding in Student C's closet and told Student C that his cougar card was in her room

even though Student A had possession of his cougar card throughout the night.

12. Student A was severely intoxicated at the time sexual contact. As a result of his intoxication, he lacked the ability to understand the nature or consequences of his actions, and was therefore incapable of consenting to sexual activity.
13. Student B knew, or should have known, of Student A's level of intoxication and his inability to understand the nature or consequences of his actions at the time of the sexual contact with Student A.
14. Student B's assertion that she was more intoxicated than Student A at the time sexual contact occurred was self-serving and inconsistent with witness accounts. OEO finds that more likely than not, Student B was not too intoxicated to understand the nature and consequences of her actions, nor too intoxicated to consent to sexual contact.
15. Student B subjected Student A to conduct on the basis of his sex and/or gender; Student B's conduct made Student A feel "uncomfortable," and "violated," and was sufficiently severe, persistent, or pervasive to create a hostile or offensive educational or living environment for Student A

Based on the totality of the investigation and the foregoing findings, OEO finds that Student B's conduct toward Student A violated EP 15. Therefore, OEO refers this matter to SSA to take action as appropriate, pursuant to the WSU Standards of Conduct for Students.

OEO's findings, conclusion, and recommendation in this matter are based on EP 15, and interpretations of EP 15. Nothing in this report is based upon, or intended to be understood as a statement or interpretation of law.

Summary of Interviews

Student A

Student A said that on the evening of January 25, 2014, he was drinking alcohol with friends in a residence hall room. He said he had eaten dinner at around 6:00 p.m. and began consuming alcohol at approximately 10:00 p.m. He said he consumed a large amount of Fireball cinnamon whiskey and some amount of vodka as well. He said he was "all over the place" that night. He said he had been "walking the hallways" visiting with others, many of whom were socializing and drinking alcohol as well.

Student A said that over the course of the night, he consumed Fireball straight from the bottle, and ultimately drank the entire bottle, which was a "standard fifth." He said he also drank vodka straight from the bottle but he does not remember how much. Student A said that he encountered Student B at approximately 12:00 a.m., two hours after he had begun drinking. He said that at that time, his level of intoxication on a scale from one to ten was at a ten. He said his memory of the night was blurry and that he did not remember the events leading up to his interaction with Student B. He said he remembered tripping while he was in Student B's room, and he remembered being in her room but not how he "ended up" there.

Student A said that while he was in Student B's room, she began kissing him and asked if he had a condom. He said he went back to the room where he had been drinking and asked if anyone had a condom. He said he did not recall if he had obtained a condom at that time.

Student A said that while he was in Student B's room, he "kept asking for [his] Fireball," because he "just wanted her gone." He said Student B offered him vodka, which she had in her room, instead. He said that he continued to ask for his "Fireball," and Student B eventually left the room to find it.

He said that while Student B was gone, Student C and Student D came to the door to check on him but Student B came back, pushed them out the door, and said "'we're fine.'" Student A said that when his friends were at the door, he was unclothed. He said he thought Student B had removed his shirt, but does not recall how the rest of his clothes had been removed. He said that, at approximately 12:00 a.m., Student B had not found the bottle of Fireball, so he consumed the vodka she had given him.

Student A said, "From what I remember, there was sex." He said he remembered "snap shots" of what occurred. He said he remembered being on Student B's bed, that "she gave me oral sex and I gave her oral stimulation." He said that he was on top of Student B, and he remembered that Student B had a bag of condoms. He said he could not remember if he had obtained the condoms earlier or if they used condoms that Student B had. He said that "after everything happened" Student B told him "Let's go to the shower." He said Student B took him to the shower and "performed oral sex on [him]" in the shower and he thought he had ejaculated in the shower. He said that at

that point he was "really uncomfortable," and "wanted to leave" but Student B kept saying "No, Wait," and that she needed to wash her hair.

Student A said that, after the shower, he ended up in Student C's room, but wasn't sure whether he had walked there on his own, or if Student C had found him. He said that while in Student C's room, he hid from Student B. He said Student B came to Student C's door and asked for him but he hid in the closet.

Student A said Student B told Student C that Student A needed to return to her room to retrieve his cougar card and Student C said that she would retrieve it and Student B told Student C, "No [Student A] has to come get it." He said Student C did go with Student B to retrieve his card. Student A said that his memory was clearer during the time he was hiding in the closet; he estimated that his level of intoxication at that time was approximately a seven on a scale of one to ten. He said that at some time after Student B left and while he was still hiding from her, she sent him text messages asking questions about a class they both had. He said he deleted those text messages. He also said that the Student B sent him a Facebook message at 2:53 a.m. that said "I miss you," and he provided a copy to investigators (see attached).

Student A said that Student C told him that, when they were walking to retrieve his cougar card, she told Student B, "You can get in trouble. He doesn't want to," to which Student B said, "Too late, we already had sex." Student A said he did not think Student B drank any vodka when he did, and he did not know if she had been drinking that evening.

He said he remembered that at some point during the sexual contact, Student B told him, "I've always wanted to do this." Student A said that if he had been sober he would "absolutely not" have engaged in sexual contact with Student B, in part because he had never had sexual contact before this incident. He said he felt "violated" and "uncomfortable" following the incident.

Student B

Student B said that on January 25, 2014, she had stayed home sick from work but she felt better later that evening. She said that at around 11:30 p.m., she went to the floor lounge of her residence hall and saw a group of residents playing a card game. She said she played the game with them for about 30 to 40 minutes and went back to her room to change because she was cold. She said that, during that time, the group of residents moved to a resident's room, and Student A had joined them.

Student B said that, at approximately 12:15 a.m., in the middle of playing beer pong, she went to her room to get a bottle of tequila. She said that the Resident Advisor came in a few times to remind them of quiet hours. She said they decided they did not want to play beer pong any more so they pulled the desks together and played "rage," another drinking game, which used 20 to 25 solo cups containing vodka and Hawaiian punch. Student B said the point of "rage" is to make other people drink.

Summary of Interviews

Student A

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Student A said that while he was in Student B's room, she began kissing him and asked if he had a condom. He said he went back to the room where he had been drinking and asked if anyone had a condom. He said he did not recall if he had obtained a condom at that time.

Student A said that while he was in Student B's room, he "kept asking for [his] Fireball," because he "just wanted her gone." He said Student B offered him vodka, which she had in her room, instead. He said that he continued to ask for his "Fireball," and Student B eventually left the room to find it.

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that point he was "really uncomfortable," and "wanted to leave" but Student B kept saying "'No, Wait,'" and that she needed to wash her hair.

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Student A said that Student C told him that, when they were walking to retrieve his cougar card, she told Student B, "'You can get in trouble. He doesn't want to,'" to which Student B said, "'Too late, we already had sex.'" Student A said he did not think Student B drank any vodka when he did, and he did not know if she had been drinking that evening.

He said he remembered that at some point during the sexual contact, Student B told him, "'I've always wanted to do this.'" Student A said that if he had been sober he would "absolutely not" have engaged in sexual contact with Student B, in part because he had never had sexual contact before this incident. He said he felt "violated" and "uncomfortable" following the incident.

Student B

Student B said that on January 25, 2014, she had stayed home sick from work but she felt better later that evening. She said that at around 11:30 p.m., she went to the floor lounge of her residence hall and saw a group of residents playing a card game. She said she played the game with them for about 30 to 40 minutes and went back to her room to change because she was cold. She said that, during that time, the group of residents moved to a resident's room, and Student A had joined them.

Student B said that, at approximately 12:15 a.m., in the middle of playing beer pong, she went to her room to get a bottle of tequila. She said that the Resident Advisor came in a few times to remind them of quiet hours. She said they decided they did not want to play beer pong any more so they pulled the desks together and played "rage," another drinking game, which used 20 to 25 solo cups containing vodka and Hawaiian punch. Student B said the point of "rage" is to make other people drink.

Student B said she thought Student A had not consumed alcohol prior to playing "rage," but that if he had, it was "maybe a shot or two of Fireball." She said the bottle of Fireball was "pretty full" at the beginning of the night. She said that, between the first and second rounds, she consumed 14 to 15 cups of the vodka and Hawaiian punch mixture. She estimated that this was the equivalent of approximately seven shots of the mixture. She said Student A consumed three or four cups during the first round. She said, "I kept losing so I drank the most."

Student B said that, in between rounds, she drank two more shots of tequila and two to three "swigs" of Fireball. She said Student A was taking "shorter shots" and she was taking "bigger drinks." She said that, during the second round, Student A's friends started giving her more cups to drink. She said she also took three shots of Jack Daniel's whiskey and left the room at around 1:30 a.m. to vomit in the restroom. She said she was gone for about five minutes and vomited four times.

Student B said that, as she returned to the room, she stumbled and was "walking against the wall." She said she saw Student A in the hallway and he asked where she was going. She said she told him she got something on her shirt and she was going to change. She said Student A began kissing her, as she leaned against her door for approximately one minute. She said she told him that if he wanted to have sex that night he should get a condom. She said he walked down the hallway "really fast" and returned with two condoms.

Student B told investigators she said she had a clear memory of the evening. Investigators asked Student B what her level of intoxication was at that point in the evening, on a scale from one to ten. She said that she was at an eight because she could not walk and she was slurring her words. She said Student A's level of intoxication was at approximately a four or five. She said he was "a little bit past tipsy." She said she tried to clear a path to her bed and she fell and twisted her knee as she was getting off her bed.

Student B said she had expected Student A to return after about five minutes. She said he knocked on her door and she let him in. She said they went to her bed and he fell as he was trying to take his clothes off. She said he pushed her on the bed and took her clothes off. She said they were kissing and he pushed her down. She said, "I was too drunk for anything." She said she put her robe on and went into the hall to look for the bottle of Fireball. She said Student A attempted vaginal intercourse but that was not working so she offered to perform oral sex on him, which she did on the bed. She said that she suggested they attempt vaginal intercourse again with another condom in the shower. She said that did not work either so she "just gave him another blow job."

Student B said that they had been in the shower, located in her residence hall room, for approximately two minutes, when someone knocked on her door and Student A told her to answer it and she did. She said it was Student F and two or three friends. Student B said she was in her robe and had a towel around her hair because she had just been in the shower. She said they asked if Student A was in her room, and she told

them that he was and that they were busy. She said Student A walked out to greet them while he was still naked. She said he said, "Hey guys what's going on?" and they said, "Don't worry, we didn't see anything."

She said that after Student F and her friends left, she and Student A got back in the shower. She said that is when they attempted vaginal intercourse again for a few minutes. She said Student A took off the condom and she performed oral sex again for approximately 20 minutes.

Student B said she and Student A got out of the shower and grabbed towels. She said they both drank Fireball whiskey and vodka for approximately ten minutes. She said they lay on the bed and were talking and making out, and then Student A wanted to find his friends, and left.

Student B said that after Student A had left, she went to activate her cougar card at a kiosk on a lower level of the residence hall, but she could not read the screen due to the level of her intoxication. Student B said she went upstairs, saw Student C, and asked her where Student A went. She said Student C said, "[Student A] went to bed. [Student B] it's time to go to bed. It's 3:00 a.m." She said she pulled out her phone and said, "No. it's 2:50 a.m." then went back to her room and lay down. She said that about 20 to 30 minutes later another student knocked on her door and said, "[Student A] is worried about his Fireball." She said she was "too tired" and did not ask "why," but gave it to the other student and went to bed.

Student B said that the next morning, at around 8:00 a.m., she went to the lounge to get ice for her knee and she saw that the bottle of Fireball was sitting in the lounge with less whiskey in it than she remembered. She said that, mid-afternoon on Sunday, she went to the lounge and saw Student A, Student C, and the resident who lived in the room where they had all been drinking. She said they were discussing how the night had gone. She said she saw Student A on that Sunday, Monday, and Tuesday and "everything seemed fine." She said that she saw someone had written, "Pray for [Student A]. [Student A] was taken advantage of," on a whiteboard and she erased it. She said that Student C had seen the same statement written on another whiteboard and she said, "That's rude" and also erased it.

Student B said she thinks she had been "a lot" more intoxicated than Student A on the night of the alleged incident. She said she has never thrown up before that night. She said, "I drank that night. I'm being punished." Investigators understood these statements by Student B as her raising a complaint against Student A. (These allegations are addressed in the analysis and findings section of this memo).

Student C

Student C said that on the night of the alleged incident, she had been hanging out with eight or nine people, including Student A. She said that starting at around 9:00 p.m., she and the others were drinking, playing games, and hanging out. She said that she

had not been drinking very much but Student A was "very drunk." She said she has consumed alcohol with him previously and he was "way beyond normal" that night.

Student C said she saw Student A drink "almost a whole fifth of Fireball." She said they played the drinking games "beer pong" and "rage cage." She said that Student B entered the room while they were playing beer pong. She said Student B had approached Student A and was touching his arms. She said Student B was not drinking during the beer pong game.

Investigators asked Student C to estimate both Student A's and Student B's level of intoxication on a scale from one to ten. Student C said that, at that point, Student A was at a seven or eight and Student B was at a zero. She said Student A was slurring his speech, laughing, could not form sentences, was loud, had "heavy eyes," and was swaying when trying to stand still. She said she did not know if Student B had consumed alcohol earlier in the evening but based on how she was acting she "didn't seem" to be intoxicated.

Student C said that, at around 10:00 p.m., they switched to playing rage cage. She said she believes Student B was drinking at that point. She said that Student A and Student B were not interacting with each other during the game. She said that after the game Student B started standing next to Student A. She said that, at that time, Student A's level of intoxication was at a nine and Student B's level of intoxication was at a two or three.

Student C said she saw Student A and Student B at the end of the hall talking. She said Student A came back to the room and asked, "'Does anyone have a condom?'" She said everyone in the room said, "'[Student A] you don't want to do this.'" She said Student A laughed and then left. She said that she and a few other students knocked on Student B's door and said, "We just wanted to say goodnight" and Student B opened the door a crack and said, "'K. Night.'" She said she asked, "Can we say goodnight to [Student A]?" and Student B said, "'[Student A] your friends say goodnight,'" then closed the door. She said she knocked on the door again and said, "We'd really like to see [Student A]" and she could see him behind Student B. She said he was "fully naked" and that is how she knew he was past the point of being able to understand what was happening. She said, "He would never let me see him like that."

Student C said three or four minutes later Student B came out looking for the Fireball and went to the end of the hallway. She said she knocked on Student B's door "to get [Student A]" and Student B heard her and ran back. She said Student B went back in the room.

Student C said she knew Student A and Student B were having sex because she could hear them in the shower. She said she heard Student B say, "'You like that?'" She said it was "too awkward."

Student C said that, about 15 minutes later, Student A came to her room and said that he and Student B had sex and he had told Student B that he needed to check on his friends. She said she did not remember exactly what Student A said but she understood from his body language that he was upset. She said that she understood from what he was saying that "he couldn't believe he'd just did it." She said he told her something to the effect of, "I realized what I was doing so I said I needed to go see my friends."

Student C said Student B knocked on her door and Student A hid in her closet. She said Student B asked, "Is [Student A] in here?" and she said, "No. He's not." She said Student B said, "I heard his voice," and she replied, "Not him." She said Student B asked to see Student A and she said, "Not here" then closed the door. She said that, at that time, Student A's level of intoxication was at a nine and Student B's level of intoxication was at a two.

Student C said Student B knocked again and said, "Tell [Student A] that he left his cougar card," and she told Student B, "I'll come get it," and followed Student B to Student B's room. She said that, as they walked down the hall, she told Student B, "You need to leave him alone; this could be considered rape; you need to stop." She said Student B had "no reaction" and said, "No. I just want to hang out with [Student A]." She said Student B then told her "It's not in here." She said she found out later that Student A had his cougar card the whole time.

Student C said, "He was so unaware of what was happening and she was so persistent about getting him back to her room." She said, "She knew how drunk he was; everyone did; you could just see it on him."

Student D

Student D said he arrived at the residence hall "really late" and his roommate brought him to Student B's room. He said there were seven people in the hall outside her door including Student C. He said he was trying to listen to what was going on inside the room. He said he left and went to the lounge for approximately one hour, then to Student C's room with Student C's boyfriend. He said that Student A was in Student C's room and was talking about what had happened.

Student D said Student A said, generally, that he had had sex with Student B. He said Student A said something to the effect of "I should not have done that." Student D said that it was his understanding that Student A had regretted it.

Investigators asked Student D to estimate Student A's level of intoxication on a scale from one to ten when he encountered Student A in Student C's room. He said that, at that time, Student A was at a six or seven and was "fairly fine." He said Student A was not stumbling or slurring his words but he knew Student A had been drinking. He said Student A acts a "certain way" when drinking. He said Student A is more outgoing and expressive.

Student D said that he was later in the lounge when Student A walked in and asked him if he knew what happened. He said he responded that he did know and "joked about it for a sec." Investigators asked him to clarify what he meant by "joked" and he said he had said, "Damn [Student A]" and Student A had responded, "Yeah." He said it was "like, oh man, I screwed up." He said that he had understood that Student A "didn't like her at all."

Student D said that after Student A left the lounge, Student B came in. He said he did not recall what she said but said, "I think I said a few words to her." He said she came in with her bathrobe on and sat down. He said, "She was not intoxicated." He said she was moving around "fairly well" and "she seemed like I usually see her." He said that he knew she had been drinking "a little bit" based on what others had told him.

Student D said that, later, Student C told him more about what had happened. Student D reiterated to investigators what Student C had told him, which was consistent with what Student C told investigators.

Student E

Student E said that, on the night of the alleged incident, he was "like the only one on the floor who was sober." He said that he had been with the group of friends, including Student A, who were playing drinking games at around 9-9:30 p.m. He said Student A drank a fifth of Fireball and he had commented that Student A had been drinking "a lot." He said he left the group shortly after Student B arrived, which was at approximately 10:30 -11:30 p.m.

Student E said he did not see Student A or Student B again until around 12:00 a.m. when he saw several residents standing outside Student B's door listening to something. He said one resident said, "Oh my god. [Student B] and [Student A] are about to do it." He said someone knocked on the door "trying to get it to stop." He said they all knew Student A would not have wanted to engage in sexual activity with Student B because he did not like her and he knew Student A was "really drunk."

Student E said Student B came out of the room and walked down the hall. He said he told Student A, "You don't want to do this; come out." He said Student A said something to the effect of "No, it's too late." He said that, at that point, Student B came running down the hallway and said, "Stop, you're gonna ruin it." He said that Student C and another resident pushed their way into the room and saw Student A naked. He said they came back out and the door closed.

Student E said Student A was "heavily slurring his speech" and was "stumbling and swaying." Student E said Student B "did not seem intoxicated." He said she was "walking like a normal person."