

UNIVERSITY OF MINNESOTA

Twin Cities Campus

Office for Student Conduct and Academic Integrity
Office for Student Affairs

211 Appleby Hall
128 Pleasant St. SE
Minneapolis, MN 55455
Office: 612-624-6073
Fax: 612-626-2298
Website: www.umn.edu/oscai

Sent electronically to [REDACTED]

PERSONAL AND CONFIDENTIAL

Regarding Case Number: [REDACTED]

Dear [REDACTED]

The Office of Equal Opportunity and Affirmative Action (EOAA) has concluded the investigation regarding incidents which occurred on September 2 involving several other students. The EOAA report states you engaged in sexual misconduct by sexually assaulting and harassing another University of Minnesota student. This incident involved several University of Minnesota students and a football recruit.

In order to determine a possible violation of the Student Conduct Code, EOAA conducted a thorough investigation which included interviews with you, the reporting student and witnesses. They considered all of the evidence and the credibility of witnesses in their investigation.

Upon completion of the investigation, EOAA forwarded the report to our office. Attached you will find the report. In order to protect the identity of the parties involved, this report is redacted and you are identified as [REDACTED].

Reading through this report may cause unexpected emotions or reactions. You may want to consider reading this letter and the EOAA report with a support person to help you process your reactions and/or help explain next steps of the process or what options may be available to you at this point. If you would like support while you read this report, I encourage you to make an appointment with the [Student Counseling Services](#) or the [Student Conflict Resolution Center](#).

As the result of the investigation completed by EOAA you have been found responsible for violating the University of Minnesota [Student Conduct Code](#), specifically:

Subd. 6. Harm to Person. Harm to person means engaging in conduct that endangers or threatens to endanger the physical and/or mental health, safety, or welfare of another person, including, but not limited to, threatening, stalking, harassing, intimidating, or assaulting behavior.

Subd. 8. Sexual Misconduct. Sexual misconduct means any non-consensual behavior of a sexual nature that is committed by force or intimidation, or that is otherwise unwelcome. Sexual misconduct includes the following behaviors: sexual assault, relationship violence, stalking, and sexual or gender-based harassment.

Subd. 19. Violation of University Rules. Violation of University rules means engaging in conduct that violates University, collegiate, or departmental regulations that have been posted or publicized, including provisions contained in University contracts with students. Specifically you were found to have violated the following:

[Administrative Policy: Sexual Harassment](#)

[Administrative Policy: Sexual Assault, Stalking and Relationship Violence](#)

Subd. 21. Persistent Violations. Persistent Violations means engaging in repeated conduct or action in violation of this Code.

As a result of these violations, you are being offered the following sanctions to resolve this matter informally:

EXPULSION: Effective immediately your University of Minnesota studentship will be ended with resultant loss of all student rights and privileges. A disciplinary hold will be placed on your record. The hold will prevent you from registering at the University and from obtaining your records through routine channels.

Both you and the reporting student are being notified of this outcome at the same time. Each party has the option to request a formal hearing by the Student Sexual Misconduct Subcommittee (SSMS) if the outcome is unacceptable. If I have not heard from either party within five business days (by December 20, 2016) of sending this letter, then the decision will stand.

If you have any questions about this matter, please make an appointment to see me. You can reach me by calling (612) 624-6073.

Sincerely,

A handwritten signature in black ink, appearing to read 'SDzik', with a large, stylized flourish at the end.

Sharon Dzik
Director

CC: Mark Coyle, Department of Athletics
Tina Marisam, Equal Opportunity and Affirmative Action
Julie Manning, Department of Athletics

UNIVERSITY OF MINNESOTA

Twin Cities Campus

Office of Equal Opportunity and Affirmative
Action

Office for Equity and Diversity

274 McNamara Alumni Center
300 Oak Street S.E.
Minneapolis, MN 55455

Office: 612-624-9547
Fax: 612-624-5223
<https://diversity.umn.edu/eoaa/>
Email: eoaa@umn.edu

December 7, 2016

Sharon Dzik, Director
Office of Student Conduct and Academic Integrity
[sent via Maxient]

Re: Case number: 7360
Reporting student: RS
Accused students: A1
A2
A3
A4
A5
A6
A7
A8
A9
A10
A11
A12

Dear Ms. Dzik:

The University's Office of Equal Opportunity and Affirmative Action ("EOAA") has completed its investigation of RS report that she was sexually assaulted and sexually harassed by numerous students in apartment B in the Radius at 15th apartment complex ("Radius") between approximately 3:15am and 4:20am on September 2, 2016. Given RS report that she cannot identify all of the men who engaged in this sexual misconduct, we included in the group of "accused students" all students about whom there is evidence that they were present in apartment B during the relevant time period.

EOAA investigated to determine whether any of the accused students' conduct violated the Administrative Policy: *Sexual Harassment*, the sexual assault portion of the Administrative Policy: *Sexual Assault, Stalking and Relationship Violence* and/or related provisions of the Board of Regents Policy: *Student Conduct Code*.

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RELEVANT POLICIES

Sexual Assault

The University's Administrative Policy: *Sexual Assault, Stalking and Relationship Violence* defines sexual assault as "[a]ctual, attempted or threatened sexual contact with another person without that person's affirmative consent." Affirmative consent is an "[i]nformed, freely and affirmatively communicated willingness to participate in sexual activity that is expressed by clear and unambiguous words or actions." Clear and unambiguous words or actions are those that are freely and actively given by informed individuals and that a reasonable person in the circumstances would believe communicate a willingness to participate in a mutually agreed upon sexual activity.

Sexual Harassment

The University's Administrative Policy: *Sexual Harassment* defines sexual harassment as "[u]nwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when: (1) [s]ubmission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement in any

University activity or program; (2) [s]ubmission to or rejection of such conduct by an individual is used as the basis of employment or academic decisions affecting this individual in any University activity or program; or (3) [s]uch conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive work or academic environment in any University activity or program."

STANDARD OF EVIDENCE

EOAA determines whether sexual assault or harassment occurred using a preponderance of the evidence standard. In other words, EOAA determines whether it is more likely than not that the alleged sexual assault or harassment occurred.

SUMMARY OF EVIDENCE COLLECTED

EOAA collected information from the following sources.

1. Interviews: EOAA conducted interviews with RS the 12 accused students and 16 other students who were identified as potentially having relevant information.
2. Electronic messages: EOAA reviewed electronic messages to and from RS related to the events that occurred on September 2 in the Radius. EOAA also reviewed electronic messages sent on September 1-2 to the Empire messaging group, which consists of first-year members of the University's football team.
3. Police investigation materials: EOAA reviewed a redacted version of the Minneapolis Police Department's Case Report and Supplements related to RS allegations ("Police Case Report"). The University requested all notes, documents, recordings, videos and other information from the Hennepin County Police Department investigation. However, the Hennepin County Attorney's office did not share this evidence with the University.
4. Radius security camera footage: EOAA promptly requested security camera footage from the Radius after receiving RS report on September 23. However, the Radius had already recorded over the relevant footage at the time of EOAA's request. According to the Police Case Report, the police reviewed the Radius security camera footage and found nothing of evidentiary value.
5. Videos: EOAA reviewed two videos taken in the Radius on September 2. The first is an approximately four-second video showing RS, A2 and a University football recruit on a couch in apartment A. The second is an eight-second video showing RS and the recruit on a bed in apartment B. In addition, EOAA is aware of, but was unable to obtain, a third approximately ninety-second video showing A2 RS and the recruit engaged in sexual contact in apartment B.
6. Photographs: EOAA reviewed two photographs taken in the Radius on September 2. The first depicts the above-mentioned recruit with his shirt off and both middle fingers raised. A2 sent this photograph to first-year football players sometime between 3:05am and

3:25am on September 2. The second photograph depicts RS, the football recruit and A2 on a couch in apartment A at 3:05am.

RS ALLEGATIONS

RS reported the following:

Background

On Thursday, September 1, RS participated [REDACTED] the first University football game of the season. After the game, RS returned to her apartment in the Radius apartment building with her two roommates. They spent approximately 30 minutes getting ready to go out. During that time, RS took 4-5 shots of 100-proof vodka. RS had not drunk alcohol in several months and was dehydrated from [REDACTED] so the alcohol impacted her more than she had intended. She became "very drunk to a level she doesn't reach often." However, she does not believe that she was so drunk that she was stumbling or falling down. RS does not believe that she had any additional alcohol that night.

RS left her apartment around 12:30am on September 2. She first went to a [REDACTED] party at the Venue apartment building. RS declined to take shots of hard alcohol at this party because she was already feeling drunk. Around 2:00am, she and approximately eight other women and two football players went to the Radius apartment building.

Upon entering the Radius, RS group encountered a large group of football players in the first floor hallway. RS group went with some of these football players into apartment A where four football players live. RS and her friends spent some time in room A, and also went to other gatherings in football players' rooms on the third floor and in room 605. However, RS group of friends ultimately returned to room A.

A2 and the recruit¹

After returning to room A, RS spoke with A2 and the recruit. RS had never met either man before that night. At the time, RS believed that they were both University football players. (She later learned that the recruit was a high school student who was visiting the team as a possible recruit.) RS provided a photograph taken at 3:05am showing her, A2 and the recruit partially lying down on a couch in apartment A. RS is between A2 and the recruit. The recruit's head appears to be resting on RS shoulder.

A2 and the recruit flirted with RS. They began discussing that apartments in the Radius have different floor plans. A2 asked whether RS wanted to see his apartment on the fifth floor. RS had her period at the time, was wearing a tampon and did not plan to engage in any sexual activity. She felt that she would be safe going to A2 room given that she was going

¹ "The recruit" refers to a University football recruit who was visiting the University on September 1-2, and with whom RS had sexual contact in apartment B. We attempted to contact the recruit to gather information for this investigation, but he did not respond. We are not currently investigating the recruit's sexual contact with RS because he is not a current University member.

with two men rather than with a single man. RS told her friend Witness-1 that she was going with the two men and would be right back.

RS, A2 and the recruit entered apartment B. (Based on time-stamped photographs and electronic messages, it appears that RS was in apartment B from approximately 3:15am until 4:20am.²) The apartment was quiet and RS asked whether anyone was there. A2 answered that one roommate was sleeping and that another roommate was having sex with his girlfriend in one of the bedrooms. A2 and the recruit took RS into a bedroom and shut the door, without showing her any other part of the apartment. RS immediately felt uncomfortable that A2 had shut the bedroom door, so she asked to use the bathroom.

A2 led RS to a bathroom by the front door. RS stayed in the bathroom for a while. She began "to panic." She still felt very drunk. She removed her tampon while using the bathroom. She did not have another tampon with her, but her period was light and she planned to return to her apartment shortly so she thought she would be okay not wearing one. She was trying to make a plan about how to leave the situation when one of the men knocked on the door.

A2 then said she was taking too long and needed to come out of the bathroom. When RS opened the door, A2 was standing between her and the front door in a way that made her feel unable to leave. RS felt "kind of shocked" and did not resist. A2 walked behind RS back into the bedroom.

When RS reentered the bedroom, the recruit had already taken some of his clothes off. RS recalls the following occurrences but not the exact order in which they took place: A2 and the recruit repeatedly tried to unzip RS bodysuit that had a zipper that could unzip to about her belly button. A2 kept saying that he wanted to figure out RS bodysuit. RS repeatedly zipped it back up and said no, but in a "light-hearted manner." Both men repeatedly said, "come on," RS felt overpowered and repeatedly asked what they were doing.

The recruit and A2 took their clothes off. They may have put on condoms. RS remained fully clothed. She felt confused, isolated and trapped. RS felt that she was in a situation that she did not want to be in. However, she did not communicate this to A2 and the recruit at that time. RS felt like she could not stop what was happening. She felt that the men would either ignore any resistance or would make her feel bad about it or "cause a scene." A2 unzipped her body suit and unbuttoned her shorts. The recruit waited nearby awkwardly. RS does not recall exactly how her clothes came off after that point.

RS next remembers A2 laying or sitting on the edge of the bed. He either used words or gestured for RS to give him oral sex. RS did not want to do this, but felt compelled. RS bent over the bed and began giving A2 oral sex. The recruit began having vaginal sex with RS from behind her. RS kept taking her mouth away from A2 penis. He repeatedly responded with something like, "What are you doing? Keep going." At this point, RS was just trying to get the men to ejaculate so that she could leave. However, neither man could

² A time-stamped photograph shows RS in apartment A with the recruit and A2 at 3:05am. While in apartment B with RS and the recruit, A2 sent a message to the Empire group at 3:25am. A2 sent a message to the Empire group stating that RS was currently having sex with multiple men at 4:17am. Shortly after returning to her apartment in the Radius, RS sent a message to her friend Witness-1 at 4:28am.

ejaculate in this position. A2 left the bedroom and shut the door. RS believes that A2 instructed her not to come out until she had sex with the recruit, although RS does not recall the exact words used.

A2 shut the bedroom door with RS and the recruit inside. The recruit laid down on the bed and motioned for RS to give him oral sex. He was not wearing a condom. RS was focused on the strong and bad smell of the recruit's penis. The recruit repeatedly encouraged RS to "come on." RS recalls that the recruit might have tried vaginal sex again. The recruit eventually said that he was too drunk and was not going to ejaculate. RS remembers feeling anxious that it was taking so long because she was trying to get out of the situation.

A2 reentered the bedroom and the recruit started to get dressed. A2 appeared disappointed that the recruit did not ejaculate. A2 referred to the recruit as a "recruit." RS asked what A2 meant by "recruit." A2 explained that the recruit was a football recruit visiting for the weekend. RS was taken aback and asked the recruit if he was in high school. The recruit said yes and that he was not going to come to the University because "it was too fucked up." RS did not see the recruit again.

RS also recalled that A2 returned and had vaginal intercourse with her at some point. She remembers both the recruit and A2 wearing condoms that had yellow/gold wrappers during vaginal intercourse. At some point that night, A2 and the recruit used RS phone; A2 followed RS on Instagram and the recruit added himself to RS Snapchat.

RS reported that she did not want to engage in sexual activity with A2 or the recruit, but felt pressured to do so and afraid to resist. RS reported that she did not know that A2 had taken a video of her having sex with him and the recruit until she was later told by the district attorney. The next day, RS recalled A2 name and participation in the above-described sexual activity.

RS *General Recollections*

As discussed above, RS specifically recalls having sex with the recruit and A2 shortly after she entered apartment B. As discussed below, RS also specifically recalls having sexual contact with four other men while in apartment B — A6, A4, A1 and A5.

In addition, RS recalls that numerous other men who she is unable to identify had sex with her. RS believes that a total of ten to twenty men had sex with her in A2 bedroom. RS cannot provide an exact number because she has limited memory of that time period and because she is unclear whether some of the men had multiple sexual encounters with her. RS recalls that some of these men held her down by her shoulders during sex. RS also recalls that, on multiple occasions, more than one man had sex with her at once. RS cannot remember details about these situations or the identities of the individuals involved. However, based on reports from individuals present in apartment A that night, RS believes that some of the men may have come to apartment B from the gathering in apartment A.³

³ According to Witness-5, at some point after RS left apartment A, Witness-5 saw some of the men in apartment A repeatedly enter and exit a bedroom and become excited. Five or six men huddled around a cellphone.

At times during the sexual encounters that occurred after A2 and the recruit left the bedroom, RS became aware that other men were inside the bedroom and clustered around the open doorway of the bedroom. There were initially around five onlookers, but the crowd grew as time went on. RS did not recognize these men at the time and still cannot identify most of them. Several of the men had their phones out and may have been taking photos or videos. The onlookers were chanting, laughing, cheering and jostling for a position in the line to have sex with RS. RS remembers that the men were arguing over whose "turn" it was to have sex with her. RS does not recall the onlookers speaking much to her.

Sometimes the crowd would open the bedroom door and watch men have sex with RS. Other times the bedroom door was shut. Sometimes RS would be alone in the room with one man. Other times, other people would also be in the room. RS repeatedly wrapped herself in a blanket to try to shield her body from the men, who she did not want to see her naked. RS does not recall ever being in the bedroom alone; there were always men in the bedroom or at the doorway to the bedroom.

RS became increasingly confused and repeatedly asked where all of the people were coming from. She repeatedly yelled at the crowd to stop sending people in the bedroom. She repeatedly yelled, "I can't handle this many people" and "I don't want this to happen." She yelled several times that she hated the onlookers, to which they laughed and someone responded, "ha ha, why?" At one point, RS asked the onlookers to "get A2" because she thought that he would help her. In response, someone said that "he has had his turn and you have a lot more to go."

RS recalls that her clothes and phone were in the corner of the room next to a white plastic shelf. They were too far away for RS to reach and RS did not want to expose her body to get them. She recalls asking for her clothes. At one point, someone responded that she "had a lot more to do" before she could get dressed. She recalls that she tried to retrieve her clothes on multiple occasions, and then someone took the clothes from her and tossed them back into the corner. Other times, there were men between her and her clothes and she did not feel that she could safely leave the bed to retrieve them.

After her sexual contact with A2 and the recruit, RS told every man who tried to have sex with her that she did not want to engage in sexual activity with them. She felt unable to leave the situation because there were so many guys by the door and she could not get her clothes. At times, she believes that she was being held down or that her fear was preventing her from moving. RS recalls focusing on the ceiling and on the television (which was turned off), and feeling unaware or confused about what was happening. RS recalls that, on multiple occasions, she suddenly realized what was happening to her and tried to push the men off of her. She remembers pushing men's stomachs in an attempt to get them off of her.

Witness-5 believes that the party in apartment A died down soon afterwards. According to Witness-3, A1 and other men left apartment A shortly after A1 received a Facetime call about someone being [REDACTED]

A4 reported that men in apartment A discussed A2 message that he and the recruit were in A2 apartment with the woman, and talked about going to A2 apartment.

A6

A6 entered the bedroom while A2 and RS were in the room. RS had never met A6 in person before. However, during the previous week, they had matched on Tinder -- an online application that is often used for dating and meeting new people. After they matched, A6 had invited RS to his room but RS had not responded to the invitation. RS had messaged A6 through Tinder earlier that evening because she was hoping to learn where the football parties were happening.

Upon entering the bedroom, A6 said he had "heard the commotion" and "wanted to see what RS was all about." A6 and RS briefly talked about having matched on Tinder. At that time, RS was sitting on the bed wrapped up in a blanket. Her clothes were too far away to grab without exposing her body. A6 was standing on the long side of the bed. RS recalls that he began bending over her and she felt completely overpowered.

At some point before or after this conversation about Tinder, A2 told A6 to leave or take RS to his own bedroom. A2 said that he did not "want this all happening in his room." A6 told A2 to calm down and "shut the door and leave." A2 left the room. RS did not see A2 again until later when he helped her to leave the apartment.

RS and A6 were then alone in the bedroom with the door shut. RS told A6 that she did not understand what was going on. A6 responded, "you are too sexy. I need my turn." A6 grabbed her hair and forced her to give him oral sex. RS repeatedly told A6 that she was going to throw up.

A6 also had vaginal sex with RS, although RS does not recall exactly how it began. While A6 was penetrating her vaginally, RS felt pain and began staring intently at the ceiling and wall. While sex with A2 and the recruit had been uncomfortable, A6 vaginal penetration was forceful and rough and caused RS pain. RS repeatedly said that they needed to stop because it hurt her. A6 either did not respond or said that he was almost finished. RS also remembers trying to push A6 off of her. While A6 was penetrating her, RS became confused and disoriented. At some point, she recalls that other men were knocking and opening the door and that A6 repeatedly told them to "get out" and that he needed to "finish" first.

After A6 finished having sex with RS, another man entered the room. RS believes that it might have been A10. Both men eventually left the bedroom and another man or men entered. The next day, RS recalled A6 name and participation in the above-described sexual activity.

A10

At some point, A10 entered the bedroom and introduced himself. RS responded that she would probably not remember his name since there were several men present in Rooms A and B with "K" names, referring to A7 and A4. A10 responded that it was probably good if she did not remember his name. RS does not specifically recall having any sexual

contact with A10. RS later recalled A4 name and confirmed that he was the individual who she had met in apartment B by viewing his online football photograph.

A4

At some point near the beginning of her time in apartment B, A4 entered the bedroom. RS had wrapped herself in a blanket to cover her body. The bedroom lights were turned on. Around that time, RS yelled to the crowd of onlookers to get A2 as she thought he might help her. Men in the crowd told her that A2 had left. RS repeatedly told the onlookers that she hated them. She repeatedly told them to stop sending people into the room and that she did not want any more people. RS repeatedly asked where are all these people coming from. RS believes that she communicated that she needed help, but the onlookers continued to laugh and discuss who would have sex with RS next.

RS repeatedly told A4 that she did not want to do anything sexual with him. A4 repeatedly told RS that it was not fair and that he did not understand why she would have sex with everyone but him. He took off his pants. RS also recalls that his shirt was off. A4 said that she could "only do a blowjob" and that it was "no big deal." A4 grabbed RS head, led it to his penis and told her something like it would be over soon. RS felt that she had no choice but to comply, as she felt unable to leave. RS did not initiate or willingly engage in any sexual activity with A4. RS does not remember exactly how this sexual contact with A4 ended.

RS later recalled A4 name and confirmed that he was the individual who engaged in this conduct by viewing his online football photograph.

A12

At some point, A12 entered the bedroom. The lights were on and few people, if any, were in the room at this point. A12 told RS to "do the same thing that A4 got." RS repeatedly told him no. She repeatedly told him that she did not want to have sex with so many people. RS cannot recall whether she had any sexual contact with A12. However, she does remember A12 standing in front of her with his shirt off. The next day, RS identified A12 as the individual who engaged in this conduct by viewing his online football photograph. He was particularly identifiable because of his [REDACTED] than many of the other men who were present.

A1 and A5

Toward the end of RS time in apartment B, A1 A5 and two other men were in the bedroom. RS had tightly wrapped herself in the blanket on the bed and the bedroom light was on. RS wanted to leave but was too scared. Among other things, she feared that if she tried to leave, the men would realize the severity of what had happened to her and harm her further or refuse to let her leave.

A1 said, "I know her. She is my baby girl." RS had met A1 on two prior occasions because he had [REDACTED]. Since RS knew A1 she felt some relief because she believed that he would help her to leave the situation. RS asked how long she had been in the room and someone answered that it had been around 50 minutes. While RS cannot recall many events that occurred in the bedroom, a few events brought her back to reality. Seeing A1 who she had met before, was one of those times when she was functioning better mentally and that she can remember fairly clearly.

At this point, the men were sitting on the bed and talking with the lights on. RS felt a bit safer. There was no one between RS and her belongings and she felt able to retrieve her phone for the first time. Just as RS unlocked her phone, A1 took it from her and said that he was adding himself as a Snapchat friend. A1 then gave the phone to A5. At that point, or some other point, A5 added himself to RS Instagram account. Then, A5 or someone else must have returned RS phone to the floor near her pile of clothes because that is where she next saw it when she was finally able to get dressed. RS does not believe that the men present took her phone because they were worried that she would call for help. RS believes that, at that point, the men may have thought that their conduct was okay.

All of a sudden, A1 told someone to turn off the bedroom light and shut the door. The next thing RS knew, A1, A5 and another unknown man were jostling to shove their penises into RS mouth. They took turns and pushed each other out of the way. They were forceful. At some point, A1 was trying to put his penis into her mouth from the left side, another man was doing the same from the right side and A5 was above this other man on the right side masturbating above RS head. At the same time, another person who RS cannot identify was having vaginal sex with her.

During much of this encounter, RS could not talk because one of the men's penises was in her mouth. However, at other times, RS was able to say that it hurt and she wanted to stop. The men repeatedly responded by flipping her into a different position, telling her it would be over soon and being more forceful. RS believed that she may have tried to shove the men away from her.

Then, A1 took control and began having fast, rough and hard vaginal sex with RS. RS found it very painful. RS repeatedly told A1 to stop. He responded by saying "be quiet" or "shush" or something similar and flipping her to another position and becoming more forceful. A1 held RS down by her shoulders and upper arms when he was on top of her during vaginal sex. At some point, he flipped her onto her hands and knees and had vaginal sex with her from behind her. RS believes that A5 and/or other men may have remained in the bedroom. In particular, she recalls someone standing in the corner near her clothes.

At some point, A1 and the two unknown men left the room. A5 stayed behind. A5 forced RS to give him oral sex. He controlled RS head by pulling on her hair. RS remembers thinking that her hair was going to rip out of her head. A5 ejaculated from oral sex and RS remembers that there was semen all over her and his hands.

Then, A5 began having vaginal sex with RS. He was on top of RS. RS tried to push A5 off of her. In doing so, RS ripped A5 condom with her fingernails. A5 said something like, "Oh my god you ripped the condom. Damn, you've got some sharp nails." A5 shoved his penis back into RS vagina with the ripped condom still on and resumed rough sexual intercourse. At some point, A5 had sex with RS from behind her, with RS on her hands and knees. A5 ejaculated again. RS was covered with semen, which she tried to wipe onto A5 body.

A5 then sat up or kneeled in the bed with a look of shock on his face. At this point, the bedroom light was on. RS watched A5 face as he looked around the room. He began swearing under his breath as he looked at the mess in A2 bedroom. The approximately two-foot strip of floor between the bed and television stand was covered with yellow/gold condom wrappers and used condoms. There was a pile of around 12 used condoms on top of a white plastic set of drawers next to the television stand. Semen was dripping down the drawers.

RS was shocked and horrified to see so many used condoms and condom wrappers. There were far more than ten condom wrappers. She could only remember bits and pieces of what had just happened. She had no sense of how long she had been in A2 bedroom or of how many men had had sex with her. She remembers wondering, oh my god, how can I not remember what just happened.

A5 left the bed and began cleaning up the condoms and condom wrappers from the bedroom floor. He looked concerned and kept muttering, "oh my god." RS saw that A5 was distracted with cleaning and she retrieved her clothes from beneath condom wrappers on the floor and began to get dressed. The next day, RS recalled A1 and A5 names and participation in the above-described sexual activity.

A2 Returns and RS Leaves

A2 entered the bedroom when RS was nearly dressed. A2 told A5 to leave the bedroom. A5 responded that he was only trying to clean the mess. A2 led RS to the front door. RS remembers that men were in the apartment hallway as she left, but she does not know who they were.

A2 and RS spoke briefly in the hallway outside of the apartment. A2 asked RS whether she was okay. RS was confused and "in a daze." She did not realize the extent of what had happened. She replied, "I don't know what you mean by okay." A2 responded, "I am the one who usually has to save girls from this situation and I wanted to know whether you were okay." RS was confused about what had happened and kept repeating, "I don't know."

A2 also asked whether RS would tell anyone what had happened. She responded that she would not. Based on her text messages described previously, RS left apartment B around 4:20am.

Other Accused Students

RS reported the following information about A7, A8, A11, A3 and A9

A7 - RS thinks that A7 introduced himself to her both in apartment A and in A2 bedroom. RS thinks that, when she saw A7 in A2 bedroom, A7 said that they had already met in his apartment downstairs. She does not recall whether A7 engaged in any sexual activity with her.

A8 - RS remembers A8 very clearly. A8 stood outside of the bedroom door for much of the time that RS was in A2 bedroom. Every time the door was open, RS saw him laughing and cheering the other men on. She does not recall whether he engaged in any sexual activity with her. RS identified A8 through his online photograph.

A11 - After viewing A11 online photograph, RS reported that he looks very familiar and was very likely part of the crowd of onlookers. She cannot recall whether he also engaged in any sexual activity with her.

A3 - RS does not specifically recall seeing A3 in A2 apartment, but believes that it was possible that he was there. She does not recall whether he engaged in any sexual activity with her.

A9 - On September 2, RS recalled the name A9 from the prior night. She viewed the online football photograph of A9 and found that he looked familiar. For these reasons, she believes that he was present in apartment B with her that night. However, she does not specifically recall him being in apartment B or whether he engaged in any sexual activity with her.

After RS Left Apartment B : Early morning on September 2

RS left A2 apartment by herself and immediately started crying. She returned to her room on the 6th floor of the Radius apartment building. She was confused. She realized that she had no idea what had happened to her, except that men had had sex with her, she had been violated and she felt physical pain. She could not recall how many men had had sex with her or who they were. Soon after returning to her apartment, RS scribbled the following messages on three pieces of paper, which she provided to EOAA:

Page 1

Hello it's after the 1st game I need help.

- A6
- A5
- A1
- Kalmontay or something
- A2
- Denonte
- Idk ~ help

Page 2

Help I'm scared & hate everyone I need help this isn't okay

Page 3

(Something unintelligible.)

Where is everyone

PS Help

Who are they

Also soon after returning to her apartment, RS exchanged messages with her friend Witness-1 at 4:28am on September 2. RS provided these messages to EOAA. Among other things, RS wrote to Witness-1 that she had been in a horrible and scary situation involving twelve Black men, that she did not really know what had happened, and that she did not know whether she had been raped. RS and Witness-1 agreed that they would talk more about what had happened in the morning.

RS received an Instagram message from A2 at 4:41am. RS provided the ensuing message exchanges to EOAA. In the course of messages exchanged by RS and A2

A2 said that he wanted to make sure that RS was "good" and asked to talk to her. RS expressed confusion about what A2 wanted to discuss. RS ultimately agreed to talk with

A2 at his room after he told her that his roommates had gone to sleep and the visitors had left his apartment.

RS reported that she was confused and agreed to meet with A2 because she hoped he would tell her what had happened to her. RS met A2 in the hallway outside of his apartment shortly after 4:41am. A2 asked her whether she was okay and she responded that she did not know. A2 asked RS whether she would tell anyone and RS responded that she would not. RS reported that their meeting was very brief.

At 4:59am on September 2, A5 sent an Instagram message to RS asking for her phone number so that he could text her. Given her experience with A5 that night, RS was confused about his message. However, RS hoped that A5 would give her some information about what had happened to her in apartment B. RS responded, "Oh hi, I know who you are."

A5 responded, "Lol you don't want me texting you huh." RS did not respond or give A5 her phone number. RS provided these messages to EOAA.

After RS Left Apartment B : Afternoon and Evening on September 2

Witness-1 visited RS apartment during the day of September 2. RS told Witness-1 and RS roommate Witness-2 generally what had happened to her, but RS could not recall many details. Later that day, RS also told friend Witness-3 and another friend⁴ what she could remember about what had happened to her. RS reported that she felt "very sore" in her pelvic region that day and for several days afterwards.

After talking on the phone with her sister, RS drove herself to a hospital in [REDACTED] for a forensic examination by a sexual assault nurse examiner. She drove to this hospital because she knew she had health insurance coverage there. RS reported that the medical professional who conducted her exam found some irritation on her breast, but was unsure how or when that

⁴ EOAA requested a meeting with this individual to gather information for this investigation. However, she did not respond to multiple requests.

occurred. The medical professional also found "some kind of injury" on her vagina, which could have happened from non-sexual activity. RS reported that the medical professional did not find anything "significant." EOAA requested the results of RS forensic examination, but RS did not provide EOAA with these results.

On the afternoon or evening of September 2, RS exchanged additional Instagram messages with A2. RS reported that she reached out to A2 in an attempt to find out what had happened on the prior night. RS provided these messages to EOAA. In these messages, RS asked A2 to tell her what happened on the previous night, how many men had been involved and how all of those men knew to come to room B. Among other things, RS wrote: "I'm not meaning to come at you or anything, it's just you seemed like the most logical one of the bunch and I need to know this for peace of mind."

A2 responded that he and another man had sex with her and that he then left the apartment.

A2 wrote that he sent a group message telling the new players on the team that RS and the recruit had sex. A2 did not answer RS question about how many men were involved in sexual interactions with RS. A2 wrote that there were people in his apartment when he returned, but that he did not know how those people wound up in his apartment. A2 also wrote, "I know that shit was not cool I had to wash all my shit I ain't even sleep in there last night."

On September 2, football team member Witness-4 sent RS a message asking what was going on that night. RS asked whether Witness-4 had heard about any events involving her in the Radius on the previous night. Witness-4 said that he "heard something about a girl" but that it was "a girl in the freshman class." (Witness-4 also told EOAA that the situation that he was speaking about involved a first-year student and not RS.)

RS COMMUNICATIONS ABOUT RELEVANT EVENTS

RS *communications with her friends*

On September 2, RS told several friends about what had happened during the previous night.

RS first spoke with her roommate Witness-2 and friend Witness-1. Then, RS and Witness-1 visited their friend Witness-3 in the hope that Witness-3 may have learned some information about what happened to RS from Witness-3's ex-boyfriend A1.

According to Witness-2, RS began crying and said that something really bad had happened to her during the previous night. However, RS did not remember many details. RS said that she had gone to an apartment with two men. All of a sudden, there were a ton of football players in the room and more at the door. RS said that she could not move or get up and that more and more men kept coming in the room. RS said that the floor was covered in condom wrappers. At that point, RS knew that A1 had been involved but could not identify any of the other men.

RS showed Witness-2 a note that she had written when she returned from apartment B that looked like a bunch of scribbled names.

According to Witness-1, RS was confused and not exactly sure what had happened to her. RS said something like, "I think that I was raped but I am not really sure." Witness-1 advised RS not to shower in case she wanted to get a rape examination.

According to Witness-3, RS said that she went upstairs with two men and then many more men entered the room. RS "made it seem like [it] started out comfortable with two guys and then it got overwhelming." RS also said that she did not want to go to the police "because she felt it was an in-between situation" and she would feel bad for the men if she told the police.

RS communications to the police

On September 3, RS made a report to the Minneapolis Police Department. According to the police summary, RS reported that A2 A1 A5 and the recruit⁵ had sex with her. She also reported that other men had sex with her. At this point, RS recalled some information about her sexual contact with A2 the recruit and her initial conversation with A6. The information that RS provided to the police on September 3 is generally consistent with her later reports to the police and EOAA. However, at that time, her recollection of what occurred during and after her sexual encounter with A6 was very limited.

On September 6, a police officer interviewed RS for the second time. According to the police officer's non-verbatim synopsis, RS memory remained sparse. Among other things, the synopsis stated that: (1) RS identified A4 as another man who may have been in the bedroom in apartment B and who may have had sexual contact with her; and (2) RS reported "that the sexual contact between her and A2 and [the recruit] may have been consensual, but believes that the sexual contact with A6 , A1 and A5 was not consensual (quotation marks omitted)."⁶

RS reported to EOAA that the police led her to believe that her sexual activity with A2 and the recruit was consensual because she never directly said "no" and because she was not held at gunpoint or under some similar threat. However, she reported to EOAA that she never consented to sex with A2 and the recruit, that she felt pressured and scared, and that she believed that she needed to have sex with A2 and the recruit in order to leave the situation.

On September 14, RS wrote and provided the police with an eleven-page narrative about the events that occurred in A2 bedroom. In this narrative, RS provided significantly more detail than in her prior reports to the police, particularly about the events that occurred during and after A6 alleged assault. For the first time, RS also identified A12 , A7 and A10 as other men who had been present in A2 bedroom. In particular, in one section, she identified A10 as the last man to have sex with her. However, she still could not recall many details of her time in A2 bedroom. In some cases, she remembered only snapshots of people and sexual positions.

⁵ The recruit's name was redacted from the Police Case Report that EOAA received. However, the context of the report made it clear when a redacted name referred to the recruit.

⁶ According to the police officer's synopsis, in one of her two police interviews, RS stated that she sat on the couch next to A1 and the recruit in apartment A . RS reported to EOAA that she told the police, or intended to tell the police, that she sat next to A2 and the recruit.

RS communications to the EOAA

On September 23, RS first reported to EOAA that she had been sexually assaulted.⁷ RS verbal reports to EOAA are generally consistent with her September 14 written account. However, there are a few differences. For example, in her September 14 written account, RS said that A12 "made [her] do the 'same thing that A4 got.'" RS clarified to EOAA that A12 requested the "same thing that A4 got," but that she does not recall whether she ultimately had sexual contact with A12. Moreover, on or around October 24, RS recalled that she had mistakenly identified the last man to have sex with her as A10. As RS recollection of her time in A2 bedroom improved over time, she realized that it was A5 and not A10, who last had sex with her. RS informed EOAA and the court from which she had requested an order for protection against A10 about her mistake.⁸

RS memory

RS believes that her inability to clearly remember all of the events in A2 bedroom (and her slow recovery of some additional memories) resulted largely from her experience of shock, pain and fear, rather than from intoxication. While RS reported that she was "really drunk" when she left her apartment around midnight, she felt less intoxicated while in A2 bedroom. She remembers the initial interactions with A2 and the recruit fairly clearly, but became disoriented and confused during and after her sexual encounter with A6.

DESCRIPTION OF APARTMENT B

RS and the accused students described the layout of apartment B as follows: Upon walking in the apartment's front door, one comes into a small entryway. Then one can turn left or right down a hallway or walk nearly straight ahead into A2 bedroom. By turning left, one would access A6 bedroom. By turning right, one would pass a bathroom on the right side of the hallway, pass A11 bedroom on the left side of the hallway and eventually enter the living room and kitchen area at the end of the hallway. In other words, three bedrooms line the side of the hallway opposite the front door – when facing the bedrooms, A11 bedroom is to the right of the front door, A2 bedroom is across the hallway from the front door and A6 bedroom is to the left of the front door. Conversely, A8 bedroom is on the front door side of the apartment near the living room/kitchen area.

EMPIRE MESSAGING GROUP

The Empire group includes first-year members of the University's football team, including eight of the twelve accused students. The four accused students not included in the Empire group are second-year students A5, A1, A4 and A9. EOAA obtained messages sent to the Empire group after the first football game. EOAA obtained the times at which some of these

⁷ EOAA first met with RS on September 23. [REDACTED] reported that RS told him on September 6 that 20 members of the football team had sexually assaulted her.

⁸ The EOAA investigator attended the restraining order hearing, and found RS testimony to be largely consistent with her reports to EOAA.

messages were sent, but did not obtain this information for all of the messages. On the night after the first football game, five of the accused students wrote messages to the Empire group – A11, A2, A3, A12 and A6

The Empire group messages obtained by EOAA from that night primarily discuss the locations of parties and the group members' attempts to engage in sexual contact with women. For example, numerous messages discuss finding "hoes" and bringing them to parties. For example:

- One Empire group member wrote, "Party at my crib 331 invite hoes!!
- A2 wrote, "I got 4 hoes where the party at" and "Go to the rail hella hoes"
- A11 wrote, "i just told some hoes"

Other messages discuss potential or actual sexual encounters with unidentified women. For example:

- Accused student A11 sent a message about an unidentified woman stating, "if she aint tryna fck imma be pissed."
- A11 later sent a joking message about an unidentified woman stating, "run her?" -- which generally refers to more than one man having sex with the same woman.
- A2 sent a message stating, "I'm sliding in some pussy rn lol" about an unidentified woman at 1:35am. ("Rn" is an abbreviation for "right now." "Lol" is an abbreviation for "laughing out loud.")

Other messages refer to RS :

- At 3:17am, A2 sent a message referring to RS that stated, "Me and the recruit finna double team this bitch." ("Finna" generally means "going to.")
- At 3:25am, A2 sent another message stating, "Lol we forreal going brazy lol." ("Brazy" generally means "crazy.")
- A2 later messaged, "I took good videos."
- Finally, at 4:17am, A2 messaged, "Damn A10 all 3 them n****s hitting rn." ("Hitting" generally means "having sex with." A2 used a racial epithet in this message that we do not reproduce in full.)

EVIDENCE RELATED TO RS PHONE

Based on the following evidence, we find it likely that RS briefly had possession of her phone while in A2 bedroom. This likely occurred around the time that A6 left the bedroom, and A1 A5 A4 and A10 entered the bedroom. However, we do not find this evidence about RS phone to be particularly relevant to our analysis or findings.

- RS reported that she was able to retrieve her phone while A1 A5 and two other men were in the bedroom with her. She reported that A1 took her phone soon after she unlocked it, said that he was adding himself as her Snapchat friend and then gave the phone to A5. She reported that she later found her phone on the floor near her clothes.

- A6 reported that RS retrieved her phone after they had sex.
- A10, A1 and A5 each reported that RS had her phone when they entered the room shortly thereafter. A10 reported that RS appeared to be scrolling through her Instagram account. A1 reported that RS used her phone's camera to add him as a Snapchat friend.

CREDIBILITY OF THE PARTIES

RS and the accused students reported divergent and conflicting accounts of the events that occurred in apartment B after the first football game. Among other things, we considered the following evidence and analyses when assessing the credibility of these accounts.

Conflicting reports among accused students

The accused students provided EOAA with different information from one another about key and notable facts. At times, the accused students provided information that contradicted their own reports to EOAA. Examples of these discrepancies are detailed in the individual accused student's sections below. These discrepancies within and between the accused students' accounts led EOAA to discount their credibility. Nevertheless, we found portions of the accused students' accounts to be credible when they were plausible, detailed, consistent with the accounts of other credible witnesses and/or included statements that were potentially contrary to their own interest, among other things.

Accused students' efforts to conceal information

Some evidence indicates that the accused students deliberately attempted to impede the University's fact-finding efforts. For example, evidence indicates that many accused students deleted relevant messages and videos from their phones upon learning that RS made a report to the police and/or EOAA. Specifically, eight accused students received relevant group messages from A2. However, none of these students had retained those messages on their phone at the time of their EOAA interviews. One football team member (who is not an accused student) reported that he had encouraged team members to delete their Empire group messages from September 1-2. This suggests some degree of a collective, defensive effort to conceal relevant evidence by the accused students and other members of the football team.

It also appears likely that accused students engaged in a collective effort to conceal the identities of men who were present in apartment B, but who RS and EOAA have been unable to identify. During their interviews with EOAA, the accused students were generally only willing to identify individuals who were present in apartment B after the EOAA investigator demonstrated that this information had already been provided by other sources.

Moreover, A10 volunteered the following comment about RS in his EOAA interview, "I wish she didn't remember my damn name." This comment suggests his understanding that EOAA would not have known about his presence in apartment B had RS been unable to identify him. This comment further suggests that A10 has this understanding because he and

other accused students have not disclosed the identities of others who were present in apartment B, but who RS and EOAA have been unable to identify.

RS *credibility*

In assessing RS credibility, we considered that RS reported information to EOAA that did not benefit her sexual misconduct allegations. For example, RS reported that she only initially resisted A2 and the recruit's sexual overtures in a "light-hearted" manner and also attempted to help them ejaculate faster so that she could leave the situation. RS provision of this information (to the possible detriment of her sexual assault complaint) lends credibility to her account.

We also considered that, despite the accused students' frequent lack of candor, in many cases one or more accused students corroborated portions of RS account. For example, RS distinctly recalls that many men crowded around the bedroom door and turned on and off the light while other men had sex with her. All but one accused student denied taking part in or witnessing such a crowd of onlookers near the bedroom door. However, A12 reported that he and six other men gathered around the bedroom doorway "saying things" and turning on and off the lights while RS was having sex with A5. Here, A12 report corroborates RS account (and further suggests a collective effort by the other accused students to deny this potentially sexually harassing activity).

RS recollections of the events in A2 bedroom have become more detailed as time has passed. For the most part, we found her accounts to be relatively consistent over time, even though they generally increased in detail. We generally attribute the differences among RS accounts over time to her gradual recollection of what she found to be a very traumatic experience, rather than to a lack of care or truthfulness.

On some occasions, RS recanted or clarified earlier reports that she had made. For example, RS recently reported that she had misidentified one accused student -- A10 -- as being involved in a particular sexual encounter when he was not. RS explained that she realized that the man involved in that sexual encounter had actually been A5 as time passed and her recollections became more detailed. (EOAA also found significant other evidence confirming RS recollection that A5 was the individual involved.)

RS misidentification of A10 demonstrates that RS memory of the events in apartment B may be faulty at times. However, RS report about her misidentification of A10 also demonstrates her willingness to admit that she initially remembered something incorrectly, despite the fact that such an admission could call her general credibility into question. We also found RS to carefully differentiate between men who she believes may have been present in apartment B because they appear familiar and those men who she specifically recalls being present.

We considered that RS at times behaved in ways that may appear contrary to how one might expect a sexual assault victim to behave. For example, RS reported the following to EOAA: She returned to apartment B to speak with A2 soon after the alleged sexual misconduct

occurred in that same apartment. She did not consistently scream, fight or try to escape during and between the violent sexual assaults that she describes, and she engaged in what could appear to be casual conversation with some of the men in between these sexual encounters, such as speaking with A6 about their previous conversations over Tinder, telling A10 that she probably would not remember his name and asking A1 and A5 how long she had been in the apartment.

We do not find that these behaviors indicate that RS did not experience the sexual misconduct that she describes. Rather, we find that RS' conduct during the sexual encounters likely resulted from her shock, confusion and inability to focus because of the events she was experiencing. We also find it likely that RS communicated with A2 after leaving apartment B in an attempt to determine what had happened to her, to normalize the situation and to regain control of the situation.

RS still has significant gaps in her memory of the events in A2 bedroom, and these gaps ultimately prevent us from making policy violation findings in some instances. While we find RS account to be generally credible, there are also times where EOAA cannot definitively determine whether RS or one or more of the accused students' accounts are more likely accurate. Given the available evidence, it is not possible to reconcile all discrepancies between and among RS and the accused students' accounts. However, based on the totality of the circumstances (including the apparent failure of each accused student to provide full and truthful information, as described below) we generally find RS account to be more credible.

FINDING ON INCAPACITATION

We considered whether RS was incapacitated by alcohol during her time in apartment B. According to University policy, consent for sexual contact is not obtained where there is incapacitation due to the influence of alcohol. While in apartment B, RS felt intoxicated by the alcohol that she drank earlier in the night and her judgment was likely somewhat impaired. However, information from multiple sources (including from witnesses, RS herself and videos of RS taken that night) indicates that her alcohol consumption did not significantly impair her ability to control her physical movements, her ability to communicate effectively or her awareness of her circumstances and surroundings. Based on this evidence, we find that RS was not incapacitated by alcohol under University policy.

EVIDENCE, ANALYSES AND CONCLUSIONS RELATED TO EACH ACCUSED STUDENT

I.

A2

Evidence gathered from A2 and others

1. A2 reported the following:

A2 is a first-year member of the University's football team. A2 lives in apartment B of the Radius apartment building with his roommates – A8, A6 and A11. After the first football game, A2 spent time in apartment A, where A12, A7 and two other football team members live. While in apartment A, A2 met RS for the first time.

RS sat down between A2 and the recruit on a couch. RS and A2 began following one another on Instagram. A2 told RS that he lives in the Radius and invited her to his apartment. A2 denied suggesting that they go to his apartment to look at its floorplan. RS agreed to go to A2 apartment. She briefly spoke with her girlfriends before leaving with A2 and the recruit.

RS appeared to have drunk some alcohol previously but was not drinking at the time. She did not appear intoxicated and was not slurring her words, bumping into walls or doing other things associated with drunkenness. RS was flirtatious but did not say or do anything that explicitly communicated that she wanted to engage in sexual activity.

Upon entering apartment B, RS, A2 and the recruit went directly into A2 bedroom. A2 shut the door to the bedroom. Then A2 left the bedroom to use the bathroom. A2 does not recall RS using the bathroom. However, A2 generally tells guests to use the bathroom by the front door and RS may have used this bathroom. A2 would not have waited for a guest between the bathroom door and the front door because it is a small area.

A2 the recruit and RS began talking in the bedroom about having a "threesome." She asked how it would work. She never explicitly said that she wanted to have sex with both men simultaneously, but A2 understood that she wanted to engage in this sexual activity based on their conversation about how a threesome would work.

RS, the recruit and A2 did not explicitly discuss removing their clothes or having sex.

A2 took his shirt off. Then, RS took her shirt off. Then, the recruit took his shirt off.

A2 does not recall what RS was wearing. He did not unzip her shirt, say that he wanted to "figure out her bodysuit," or take off her clothes. There was no point at which both men were naked and RS was fully clothed.

A2 laid down on his bed with his calves hanging off the bed. RS pulled A2 pants down to his ankles. RS or the recruit took her pants off. RS began giving A2 oral sex. The recruit began having vaginal sex with RS from behind her. A2 was not wearing a condom but believes that the recruit was wearing a condom from A2 drawer. RS did not ask, "what are we doing?" A2 does not believe that he or the recruit said, "come on."

After about thirty seconds of this sexual activity, RS said "this is hard." She said that she had never done this before. She said that she needed to throw out her gum. She said, "this is fucking hard I don't know." A2 responded that he could leave and that the recruit and RS could have sex one-on-one. A2 then said let me know when you are done and left the room and shut the door. He did not tell RS not to come out of the bedroom until she had sex with the recruit.

A2 took two videos while RS and the recruit were in his bedroom. The first was a short video of the recruit and RS. The second was a video of RS giving A2 oral sex while the recruit had vaginal sex with her. A2 did not have any conversations with RS about taking this video or about whether he would share this video with anyone. However, he is "pretty sure" that she knew that he was taking the video because she looked into the camera. A2 no longer has either video because the police removed them from his phone. A2 sent the short video to the Empire message group composed of first-year football players. A2 showed the second video to the recruit that night. He thinks he also showed that video to his roommates that night, and might have showed it to others that night as well. But he did not send it to anyone.

A2 could hear RS and the recruit talking inside the bedroom. It sounded like RS was frustrated because she was unable to have sex with the recruit because he could not get or keep an erection. After a bit, A2 opened the bedroom door. The recruit was putting his clothes on. The recruit finished dressing and left the room. A2 did not express disappointment that the recruit did not ejaculate. A2 did not hear the recruit say anything like, "this school is fucked up."

RS was sitting on the right side of the bed. A2 laid down on the left side of the bed. A6 briefly entered the room and stood at the foot of the bed. He talked with RS about how they had previously matched on Tinder. Then A6 left the room and RS and A2 were alone.

RS began giving A2 oral sex so that he could get an erection. RS stopped and he said, "what are you doing, keep going, just a little longer." Then, A2 had vaginal sex from on top of RS. A2 used a condom from his drawer. During vaginal sex, RS "seemed happy" and said something like, "this is much better because [the recruit] couldn't get an erection." RS moaned and grabbed his back. She was "definitely into it" and did not resist in any way.

After A2 finished having sex with RS, A6 entered the bedroom. At some point, and possibly then, A2 said that he wanted people to leave his room. A2 left RS and A6 alone in the bedroom. At that point, A2 roommates A11 and A8 were in the living room. The recruit was either already gone or left the apartment shortly afterwards.

At some point, A2 sent messages to the Empire messaging group stating that he and the recruit were in his apartment with a woman. After having sex with RS, A2 called A1 via Facetime and shared that he and the recruit had just had sex with a woman at the same time. However, A2 did not tell A1 or anyone else to come to his apartment. He was surprised when people came to his room. He had not thought that "all the guys" would come to have sex

with RS. A2 remained in the living room and did not return to the bedroom until just before RS left the apartment.

Other football players began arriving while A6 was in the bedroom with RS. A10 arrived. A2 does not know whether A10 went into the bedroom with RS. As A6 left the bedroom, A1, A5 and A4 arrived. They entered the bedroom and began speaking with RS. A2 told them to go somewhere else with RS but they did not. A1, A5 and A4 each had a one-on-one sexual encounter with RS, but A2 does not know in what order. At some point, A12 and A3 briefly entered apartment B. At some point, A4 and A1 left the apartment.

At 4:17am, A2 sent a message to the Empire group stating, "Damn A10 all 3 them n****s hitting m." A2 explained that he addressed the message to A10 because he had just left the apartment. A2 explained to EOAA that the "3" in his message referred to A1, A5 and A4 but that he was "amplifying" and that the three men did not actually have sex with RS at the same time.

A5 was the last person to have sex with RS. Over the course of the night, A2 never heard or saw anything that indicated that RS did not want to have sex or that she did not want any more people in the room. From the living room, A2 would have heard anything that RS said loudly. A2 also did not see or hear people congregating by the bedroom door, repeatedly turning on and off the lights, repeatedly opening and closing the bedroom door or yelling things into the bedroom.

A2 entered the bedroom after A5 and RS had finished having sex. Both A5 and RS were dressed or getting dressed. A4 and A1 returned to the apartment to get A5. A4, A1, A5 and RS then left the apartment at the same time. A4 and RS had a conversation as they left the apartment.

A2 direct messaged RS through Instagram at 4:41am – around 20 minutes after she left his apartment. RS agreed to talk with A2 and they talked in the hallway outside of his apartment. During that conversation, RS said she was okay. A2 did not ask RS whether she would tell anyone about what had happened in his bedroom that night.

A2 cleaned his bedroom by himself. He remembers cleaning up a few condom wrappers and one used condom that had been left on or near the television stand. He also remembers washing his sheets. He does not think that he slept in his room that night. A2 acknowledged sending an Instagram message to RS, stating, "I know that shit was not cool I had to wash all my shit I ain't even sleep in there last night." A2 explained that he intended to convey that all the men having sex in his bedroom was "not cool."

2. A2 statements to the police

The Police Case Report's summary of A2 statements to the police differs from the statements that A2 made to EOAA in the following ways:

First, according to the Police Case Report, A2 reported that RS told him that she had never had a "threesome with two guys" while they were sitting on the couch in apartment A. When speaking with EOAA, A2 reported that this conversation occurred in his bedroom in apartment B.

Second, according to the Police Case Report, A2 reported that RS had sex with men in this order: the recruit and A2 the recruit, A2 A6, A1 A4, A5. When speaking with EOAA, A2 reported that RS had sex with A4 before A1.

3. Videos

A2 reported that he took two videos while RS was in apartment B – an eight-second video ("8-second video") and a 90-second video ("90-second video").

- 8-second video:

EOAA reviewed the 8-second video taken by A2 on September 2. During the video, RS voice and posture do not convey fear. The tone of her voice could be reasonably interpreted as not serious throughout the video. The video shows RS reclining on a bed with her clothes on. She is smiling and her body is turned toward a man (whose face is not shown but has been identified by others as the recruit) with his shirt off and pants on who is sitting close to her on the bed. The recruit appears to be attempting to unzip RS one-piece bodysuit top with his right hand. RS appears to be lightly holding this hand, possibly to interfere with his attempt to unzip her top. The recruit then uses both hands to try to unzip RS top.

At this point, the video swerves and does not show RS or the recruit. However, RS can be heard saying "nooooooooooooo." Two men then speak. One says something that sounds like, "damn girl." The other says something that sounds like, "Ah shit she try . . . What, you really got a one-piece on?" A slapping sound can then be heard. (Neither RS nor A2 recalled where the slapping sound came from. However, given the context, it was likely RS slapping the recruit's hand away from her shirt's zipper.) Part of RS body comes into view and she responds, "I told you it was." RS then appears to sit up and turn her body away from the recruit. However, only a portion of RS body is visible and the recruit is not shown. Then, the video ends.

- 90-second video

EOAA was unable to obtain the 90-second video taken by A2. A2 lawyer Lee Hutton reported that he has the video and offered to provide it with RS written consent. Mr. Hutton reported that he obtained the video through a forensic investigation of A2 cellphone. RS refused to consent because she has never seen the video, and feared that it would be too painful. EOAA obtained a redacted version of the Minneapolis Police Department's description of the video.

According to the police description: The video shows A2 the recruit and RS, all naked. A2 is sitting on the bed with his legs spread. RS is on her hands and elbows with her

chest facing down. She appears to be performing oral sex on A2. The recruit is having vaginal intercourse with RS from behind her. At one point, RS says, "Okay, I have to throw out my gum, where do I put it, I can't, man, guh, no, no (laughs) it's so hard with three of you. Okay, okay this is fucking hard, I don't know." One of the men suggests that they take turns and RS replies, "I don't know."

According to the police description: The two men make gestures indicating success to one another during the sexual interaction. RS sounds somewhat intoxicated, but her coordination appears to be normal and she is not slurring her words. She does not appear to be upset by the sexual activity. She does not indicate that she wants it to stop. The Minneapolis Police Department concluded that the sexual contact "appears entirely consensual."

- A2 distribution of the 90-second video

Many members of the Empire messaging group reported that they did not receive the 90-second video through the Empire group. However, A11 reported that A2 did send this message to the Empire group, and that A11 watched it on his phone. A12 reported that "he thinks" that A2 sent this video to the Empire group. A6 reported that he heard that A2 sent this video to the Empire group, but that A6 did not see it there. A6 also reported that A2 also showed him this video on A2 phone.

The Police Case Report stated that the 90-second video was found in two different formats on A2 phone. This could indicate that A2 took the video in one format and sent it to others in another format. A2 attorney reported that a forensic expert investigated A2 phone and concluded that A2 had not sent the video to others with his phone. EOAA requested access to this expert or this expert's analysis, but did not receive it.

4. A2 messages to the Empire messaging group

We obtained messages sent to the Empire Group on the night of September 1-2. We learned the times at which some of these messages were sent, but do not have this information for all of the messages.

These messages show the following: At 3:17am, A2 sent a message to the Empire messaging group that appears to refer to RS and stated, "Me and the recruit finna double team this bitch." A2 then sent a photograph of the recruit with his shirt off to the Empire group. At 3:25am, A2 sent another message stating, "Lol we forreal going brazy lol." A2 later messaged, "I took good videos." Finally, at 4:17am, A2 messaged, "Damn A10 all 3 them n****s hitting rn." A2 also sent the 8-second video to the Empire group.

5. Witnesses reported the following relevant information related to A2 :

- Witness-1 reported the following: Witness-1 saw RS sitting between two football players on a couch in apartment A in the early morning hours of September 2. All of a sudden, RS stood up with the two men and told Witness-1 something like, "I think we are going to

go. We are going to be back though." Witness-1 asked RS whether she was sure that she wanted to go.

- Witness-3 reported the following: Witness-3 saw RS, A2 and the recruit flirting with one another on the couch in apartment A.
- The Police Case Report reported the following: The recruit reported to the police that: (1) RS the recruit and A2 were "flirting" in apartment A; (2) RS was "able to care for herself and did not appear [to be] in distress or fear;" (3) RS was "kissing and feeling on him;" and (4) RS told him that it was okay for A2 to come into the room after the recruit had finished having sex with her.
- A6 reported the following: When A6 first spoke with A2 about RS in apartment B, A2 said, "she going." A6 interpreted this to mean that RS was willing to have sex with others. A6 denied that A2 told A6 to take RS into his own bedroom. A2 said, "this is the last one" while A5 was having sex with RS. At some point after RS left apartment B, A2 said that his bedroom was messed up and that he had condoms to clean up.
- A10 reported the following: A2 said something like, "you can all go in and fuck if you want to." Based on what A2 said A10 understood that RS was willing to have sex with others.
- A4, A1 and A5 all denied leaving apartment B with RS. A4 further denied having a conversation with RS as she left the apartment.
- A12 reported the following: Shortly after arriving in apartment B, A12 saw A1, A6, A2, A4, A11 and the recruit on the living room couch. A12 understood that A5 was in the bedroom with RS. A12 understood that A1, A4 and A5 had just been in the bedroom with RS together. Someone told A12 that they were "training her" and that she had agreed. ("Training her" appears to refer to "running a train," or multiple men lining up to have sex with a woman.)

At one point, A2, A6, A11, A4, A1, the recruit, A3 and A12 gathered around the open doorway to A2 bedroom. A5 was having sex with RS inside the bedroom. One of the men was turning on and off the bedroom lights. The men were discussing who would have sex with RS next. The men were also "talking and saying things," although A12 does not remember any specific comments.

At another point, these men were listening to A5 and RS engage in sexual contact from outside of the bedroom. A12 recalled, "from the stuff she said, it didn't seem like she was into it. She said something and [the men present] decided it was messed up . . . She said something that made it seem like it wasn't the right thing to be doing. They told A2 to get A5 out of the room. A2 said, 'no man, she straight.'" A12 does not recall what RS said that caused this concern. RS later said something else that caused the men

concern. She possibly said, "don't send any more people in." A2 then said, "this is the last one."

A2 : *Analysis and Conclusions*

1. Credibility

RS and A2 accounts of their sexual contact with one another differ markedly. Given the available evidence, it is not possible to reconcile all of the discrepancies. However, we generally find RS account to be more credible for the reasons detailed in the "Credibility of the Parties" section above, and also because A2 account is at times inconsistent with: (1) credible reports from other accused students and witnesses; and (2) other evidence. For example:

- RS reported that A2 and the recruit disrobed while she remained fully clothed. A2 denied this account and reported that he first took his shirt off, then RS took her shirt off and then the recruit took his shirt off. However, the 8-second video shows that the recruit removed his shirt while RS remained fully clothed. A2 reported that he was also shirtless when he took this video.
- A6 and A12 reported that A2 said, "this is the last one" while A5 was having sex with RS. In contrast, A2 denied saying this or "paying much attention" to what was happening in his bedroom after he finished having sex with RS.
- RS reported that A2 led her out the front door when she finally left apartment B. A2 reported that A1, A5 and A4 led RS out of the apartment and walked away with her. A1, A5 and A4 denied that they left with RS or at the same time as RS. RS also denied leaving at the same time as A1, A5 and A4.
- A2 reported that he only cleaned up one condom in his bedroom. According to A6, A2 stated that his room "was messed up" and that he had to clean up condoms.

2. Sexual assault

- Did RS affirmatively consent to sexual contact with A2?

The evidence indicates that RS expressed reluctance to engage in sexual contact with A2 in the following ways. RS initially resisted A2 and the recruit's attempts to remove her clothes. RS repeatedly stopped giving A2 oral sex while the recruit was also having sex with her. According to the Police Case Report, the 90-second video shows that RS expressed during this first instance of oral sex with A2 that she did not know whether she wanted to continue sexual contact. Moreover, A2 acknowledged that, during his second instance of oral sex with RS, she stopped the sexual contact and he responded, "what are you doing, keep going, just a little longer."

Evidence also suggests that, at times, A2 failed to appropriately assess whether RS wanted certain sexual conduct. For example, A2 acknowledged that he began videoing RS having sex with him and the recruit without her permission. He also acknowledged that he showed the resulting 90-second video to other men without RS permission. As another example, A2 wrote to the Empire group: "Me and the recruit finna double team this bitch." ("Finna" generally means "going to.") This comment can be read as demonstrating A2 determination to engage in sexual activity with the recruit and RS at the same time regardless of RS wishes. However, it can also be read as mere braggadocio or blustering to his teammates. At a minimum, A2 comment suggests an expectation that RS would consent to this sexual contact.

However, the evidence also indicates that RS engaged in conduct that expressed affirmative consent to sexual contact with A2. RS continued some type sexual contact with A2 after the exchanges in which she expressed reluctance. The Minneapolis Police Department concluded that the sexual contact shown in the 90-second video appeared "entirely consensual." Moreover, RS reported that she did not explicitly communicate to A2 that she did not want to engage in sexual contact because she feared that he and the recruit would either ignore her protests, make her feel bad about her protests or "cause a scene." RS also reported that she was actively trying to get A2 and the recruit to ejaculate so that she could leave, which indicates that she behaved in a manner that A2 and the recruit reasonably understood as providing affirmative consent to the sexual activity.

Ultimately, based on available evidence, we find it more likely than not that a reasonable person in the circumstances would have believed that RS provided affirmative consent to the reported instances of sexual contact with A2.⁹

- Did RS sexual contact with A2 result from intimidation or coercion?

According to University policy, consent for sexual contact is not obtained where there is intimidation or coercion. Therefore, we must assess whether A2 engaged in intimidation or coercion. The evidence indicates that the recruit and A2 applied some pressure to convince RS to engage in sexual contact. In particular, we find that the following likely occurred:

A2 knocked on the bathroom door while RS was inside and told her that she was taking too long. The recruit and A2 attempted to remove RS top despite her resistance, which may have been reasonably perceived as light-hearted or not serious. The recruit and A2 removed their clothes while RS remained fully clothed, and then A2 removed RS clothes. A2 encouraged RS to continue sexual activity with him and the recruit even after she expressed reluctance by repeatedly stopping oral sex and stating that she did not know whether she wanted to continue.

⁹ A2 also reported that RS provided affirmative consent in specific ways, such as by: (1) taking her own shirt off; (2) pulling down A2 pants and beginning to give him oral sex while the recruit was present; (3) giving him oral sex again when he and RS were alone in the bedroom; and (4) moaning, grabbing his back and saying that sex with A2 was better than sex with the recruit while they had vaginal intercourse. Given RS denial of these events and EOAA's assessment of RS greater credibility, we do not rely on these reports in our finding of affirmative consent.

We find RS report that she did not want to engage in the sexual contact but felt isolated, trapped and fearful to be credible. Ultimately, we find that A2 and the recruit exerted pressure on RS to engage in sexual contact. However, we do not have sufficient evidence to conclude that this pressure rose to the level of intimidation or coercion required to violate University policy.

- Did A2 aid or abet any other accused students' sexual assault of RS ?

Under the *Student Conduct Code*, assisting or abetting another person or group to commit sexual assault is a violation of the *Code*'s sexual assault provision. We find that A2 violated this provision by facilitating a gathering of men in apartment B while RS was unclothed in his bedroom and without RS knowledge, by encouraging at least some of these men to enter his bedroom and have sex with RS and, in one case, by opposing other men's suggestion that they intervene in what appeared to be an unwanted sexual encounter between RS and another man.

First, A2 facilitated the gathering of men in apartment B when he: (1) messaged the Empire group that "[m]e and the recruit finna double team this bitch," (2) sent at least one video of RS to the Empire group; and (3) called A1 to tell him that he and the recruit just had sex with a woman at the same time. Given these deliberate acts, we find A2 report that he was "surprised" when men began entering his apartment to have sex with RS to be not credible.

Second, the evidence indicates that A2 made comments that encouraged men to enter his bedroom and have sex with RS and/or effectively communicated that RS had agreed to have sex with more men, when she had not. For example: (1) A10 reported that A2 told him something like, "you can all go in and fuck if you want to;" (2) A6 reported that A2 told him "she going," which A6 understood to mean that RS was willing to have sex with others; and (3) A12 reported that A2 responded "no man, she straight" when others expressed concern that RS appeared to be resisting sexual contact with A5 and suggested removing her from that situation. This evidence indicates that A2 bears significant responsibility for many men entering the bedroom where RS was unclothed and, in some cases, having nonconsensual sexual contact with RS in violation of the sexual assault provision of the *Student Conduct Code*.¹⁰

3. Sexual harassment

We find that A2 engaged in the following serious violations of the University's sexual harassment policy. We understand that A2 denies some of this conduct. However, based on the numerous discrepancies in A2 reports to EOAA, as well as our assessment in the "Credibility of the Parties" section above, we find his denial to be not credible.

First, we find that A2 made the 90-second video of RS having sex with him and the recruit without her permission. A2 reported that he did not ask RS permission to begin taking this video, but that he assumed that it was okay because RS at one point looked directly into his phone's camera. We find that A2 acknowledged act of videotaping without RS

¹⁰ As explained later in this letter, we find that A5, A1 A4 and A6 engaged in non-consensual sexual contact with RS in violation of the sexual assault provision of the *Student Conduct Code*.

permission is alone sufficient to violate the sexual harassment policy in this case. We also find credible RS account that she did not know about this video until the district attorney later told her about it.

Second, we find that A2 showed the 90-second video to others (including his roommates, the recruit and possibly the Empire messaging group) without RS permission. A2 reported that RS never gave him permission to show the video to others.

Third, we find that A2 was part of the group of men that crowded around his bedroom door to watch RS engage in sexual conduct. Among other things, we rely on A12 report that A2 was among the men watching RS have sex with A5 from the doorway. We also considered A2 report that he remained in apartment B for the entire time that RS was present.

A2 above-described conduct violated the University's sexual harassment policy because it was conduct of a sexual nature that was unwelcome to RS and had the following impacts on RS: (1) unreasonably interfering with RS academic performance; (2) unreasonably interfering with RS participation in University activities, including her participation [REDACTED] and (3) creating an intimidating, hostile and offensive environment for RS on campus and off-campus in her participation [REDACTED]. We do not detail the specific impacts on RS in order to preserve her privacy.

4. Conclusions

In conclusion, we find that A2 violated the following University policies:

1. Administrative Policy: *Sexual Harassment*; and
2. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 6 (Harm to Person). We find that A2 violated this Subdivision by engaging in harassing and assaulting behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A2 violated the sexual harassment and sexual assault portions of this Subdivision.
 - o Subdivision 19 (Violation of University Rules). We find that A2 violated the Administrative Policy: *Sexual Harassment*.

II. A6

Evidence gathered from A6 and others

1. A6 reported the following:

A6 is a first-year member of the University's football team. A6 lives in apartment B with A2, A11 and A8. After the first football game, A6 spent some time in apartment A where some football teammates live. When he returned to apartment B, A2 was in his bedroom with a woman. A11 was in his bedroom or the living room. A6 went into his own bedroom.

A2 and the recruit came out of A2 bedroom. A2 said something like, "we ran her" and "she going," which A6 understood to mean that RS was willing to have sex with multiple people. The recruit walked into the living room. A6 asked who the woman was. A2 told him to go and see. A6 looked into A2 room. A6 said, "that's RS. I know her." RS was on A2 bed. She was not wearing clothes.

A6 entered the bedroom and began talking to RS. A6 had matched with RS on Tinder and they had talked a bit over Tinder. However they had never met in person. RS was chatting normally and seemed comfortable. A6 asked her whether she wanted to have sex. She said yes and asked whether he had a condom. A6 replied that he did. A6 did not say, "it is my turn" or "you're too sexy. I need my turn." RS did not say that she did not understand what was going on. A2 did not express that he did not want A6 and RS to have sex in his bedroom.

RS gave A6 oral sex. A6 was standing up and RS was leaning off the bed. RS stopped giving A6 oral sex once he got an erection. At some point, A6 looked for but could not find the condom that he kept in his pocket. RS leaned off the bed to help A6 look for it. A6 then went into his bedroom and got another condom. A6 reentered A2 bedroom and shut and locked the door. A6 put on the condom and RS spread her legs and A6 had vaginal sex from on top of her. During vaginal sex, RS "was feeling on his back" and looked like she was enjoying sex. She repeatedly said "yes."

A6 did not grab RS hair and force her to give him oral sex. He was not rough or forceful during vaginal sex. RS never said that it hurt or that she wanted to stop. RS never said or did anything that made him think that she did not want to have sex with him. RS did not seem confused, upset or drunk.

At some point while they were having sex, someone knocked on the door. However, no one came into the room or opened the door because it was locked. After they finished having sex, A6 talked to RS for a bit. RS did not try to get dressed. After they had sex, RS looked for her phone and found it.

After A6 unlocked the bedroom door, A10 entered the bedroom. A10 said "what's up?" A6 reported that A10 "wasn't feeling it" so decided not to have sex with RS. A6 and A10 left the bedroom together and went into the living room. When A6 left the bedroom, A1, A4 and A5 were in the hallway outside the bedroom door. They were talking about who would have sex with RS next. A4 went into the bedroom by himself after A6. A1, A5 and A4 were never in the bedroom with RS together.

A10 left to go to his apartment soon afterwards and did not return. A6 went into A11 room and jumped onto his bed to bother him. Later A11 joined the others in the apartment's living room.

A6 heard A2 say that A5 would be the last person to have sex with RS. A6 did not see A8, A11 or others look into the bedroom or crowd around the bedroom door. He did not see anyone turning on and off the lights or opening up the door. He did not hear RS raise her voice or say anything to indicate that she did not want to engage in sexual activity. The men who had sex with RS after A6 all said that they asked RS whether it was okay and that she said "yeah."

A6 thinks that A4, A11, A8, A2, A1 and A5 were in the apartment when RS left. A6 reported that A7, A12 and A3 never entered the apartment that night. After the EOAA investigator stated that there was strong evidence that A12 was present in the apartment, A6 acknowledged that A12 was likely present in the apartment that night.

Later in the night, A6 asked A2 whether RS was still there, and A2 said no, she left. A6 does not know who walked RS out of the apartment. A6 went to bed shortly after RS left. He was unaware that RS returned to his apartment to talk to A2 that night. A6 did not see the mess in A2 room. However, A2 said that his room "was messed up" and that he had to clean up condoms in his room.

When asked whether anyone was worried about RS, A6 responded, "We were worried whether she was okay or not or whether she was tripping. Obviously, we didn't want her to overreact. She made it seem like it was okay."¹¹

2. A6 statements to the police

The Police Case Report's summary of A6 statements to the police is generally consistent with A6 statements to EOAA.

3. A6 messages to the Empire messaging group

¹¹ EOAA asked RS whether the events described by A6 occurred. RS denied the portions of A6 account that are within her scope of knowledge and that differ from her account provided above. For example, RS denied that A6 asked her to have sex and that she replied "yes." She also denied that she helped A6 to look for a lost condom. She also denied spreading her legs so that he could penetrate her vaginally or doing anything during their sexual encounter to indicate that it was consensual.

A6 sent messages to the Empire group about RS on the night of September 1-2. We do not know exactly when A6 sent these messages. Around 3:17am, A2 wrote to the Empire messaging group about RS, "Me and the recruit finna double team this bitch." Shortly afterwards, A6 identified RS to the group by writing, "That's RS." At 3:25am, A2 wrote "Lol we forreal going brazy." Shortly after that, A6 wrote "I hear y'all," which may have meant that he could hear A2 and RS having sex through the wall between A2 and A6 bedrooms.

4. Witnesses reported the following relevant information related to A6 :

- A12 reported the following: Shortly after arriving at apartment B, A12 saw A1 A6, A2 A4, A11, and the recruit on the living room couch. A12 understood that A5 was still in the bedroom with RS. A12 understood that A1 A4 and A5 had just been in the bedroom with RS together. Someone told A12 that they were "training her" and that she had agreed. ("Training her" appears to refer to "running a train," or multiple men lining up to have sex with a woman.)

At one point, A2 A6, A11, A4 A1 the recruit, A3 and A12 gathered around the open doorway to A2 bedroom. A5 was having sex with RS inside the bedroom. One of the men was turning on and off the bedroom lights. The men were discussing who would have sex with RS next. The men were also "talking and saying things," although A12 does not remember any specific comments or conversations.

At another point, these men were listening to A5 and RS engage in sexual contact from outside of the bedroom. A12 recalled, "from the stuff she said, it didn't seem like she was into it. She said something and [the men present] decided it was messed up . . . She said something that made it seem like it wasn't the right thing to be doing. They told A2 to get A5 out of the room. A2 said, 'no man, she straight.'" A12 does not recall what RS said that caused this concern. RS later said something else that caused the men concern. She possibly said, "don't send any more people in." A2 then said, "this is the last one."

- A10 reported the following: A10 first reported that he thinks that the bedroom door was locked while A6 and RS were inside. Upon further questioning, A10 reported that he tried to open the bedroom door and found that it was locked. A10 reported that A6 eventually opened the door and left the bedroom. Then, A10 entered the bedroom with RS alone.
- A2 reported the following: A6 entered the bedroom on two occasions. First, A6 entered the bedroom and spoke with RS and A2. A6 then left the bedroom and A2 had sexual contact with RS. A6 then entered the bedroom for a second time to have sexual contact with RS.

A6 :: *Analysis and Conclusions*

1. Credibility

RS and A6 accounts of their sexual contact with one another differ markedly. Given the available evidence, it is not possible to reconcile all of the discrepancies. However, we generally find RS account to be more credible for the reasons detailed in the "Credibility of the Parties" section above, and also because A6 account is at times inconsistent with: (1) his own account; or (2) credible reports from other accused students. For example:

- RS reported that men crowded around the bedroom door and turned on and off the light while other men had sex with her. A6 denied that this occurred, either while he was in the bedroom or at any other time. However, A12 reported that he and six other men, including A6, gathered around the bedroom doorway "saying things" and turning on and off the lights while RS was having sex with A5.
- A6 initially reported to EOAA that A12 was not present in apartment B during the relevant time period. He later acknowledged that A12 was likely present in the apartment that night.
- A6 reported that A1, A4 and A5 were never in the bedroom with RS together, not even while having a conversation. A1, A4, A5 and A10 all report that these three men entered the bedroom together to talk to RS. A1, A4 and A10 all reported that A6 was in or near the bedroom when the three men entered.

2. Sexual assault

At issue is whether RS affirmatively consented to sexual contact with A6. According to A6 account, RS provided affirmative consent to sexual contact with him. For example, she: (1) explicitly stated that she wanted to have sex; (2) willingly gave A6 oral sex; (3) helped A6 look for his condom; (4) spread her legs to indicate her willingness to engage in vaginal sex; (5) and expressed through actions and words that she wanted to continue vaginal intercourse.

In contrast, according to RS account, she told A6 that she did not understand what was going on. A6 then forced her to have oral sex by using her hair to control her head. He continued to force her to give him oral sex even after she repeatedly said that she was going to throw up. A6 then had forceful, rough and painful vaginal sex with RS. He refused to stop even when she repeatedly said stop, said that he was hurting her and tried to push him off of her.

Given our assessment of RS greater credibility, we ultimately find it more likely than not that RS did not provide affirmative consent to her sexual contact with A6.

3. Sexual harassment

The evidence indicates that A6 crowded around A2 bedroom door with other accused students to watch RS engage in sexual conduct. Among other things, we rely on

A12 report that A6 was among the men watching RS have sex with A5 from the doorway. We also considered A6 report that he remained in apartment B for the entire time that RS was present. We understand that A6 denies this conduct. However, based on the numerous discrepancies in A6 reports to EOAA, as well as our assessment in the "Credibility of the Parties" section above, we find his denial to be not credible.

We find that this conduct violated the University's sexual harassment policy because it was sexual in nature, unwelcome to RS and had the following impacts on RS (1) unreasonably interfering with RS academic performance; (2) unreasonably interfering with RS participation in University activities, including her participation [REDACTED] and (3) creating an intimidating, hostile and offensive environment for RS on campus and off-campus in her [REDACTED]. We do not detail the specific impacts on RS in order to preserve her privacy.

4. Conclusions

In conclusion, we find that A6 violated the following University policies:

1. Administrative Policy: *Sexual Harassment*;
2. Administrative Policy: *Sexual Assault, Stalking and Relationship Violence* (sexual assault provision);
3. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 6 (Harm to Person). We find that A6 violated this Subdivision by engaging in harassing and assaulting behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A6 violated the sexual harassment and sexual assault portions of this Subdivision.
 - o Subdivision 19 (Violation of University Rules). We find that A6 violated the Administrative Policies: *Sexual Assault, Stalking and Relationship Violence* and *Sexual Harassment*.

III.

A10

Evidence gathered from A10 and others

1. A10 reported the following:

A10 is a first-year member of the University's football team. He lives in apartment 331 in the Radius. After the first football game, A10 spent time in his apartment with his girlfriend, who was visiting from out of town. At some point, A10 went to apartment B to visit his friends who live there and see what they were planning to do for the remainder of the night.

A10 girlfriend remained in his apartment. At this point, A10 did not know that there was a woman having sex with multiple people in apartment B. A10 is part of the Empire messaging group but had not seen A2 messages about he and the recruit having sex with a girl in apartment B.

Upon arriving in apartment B, A10 spoke with A6. A6 said that A2 and the recruit were "running a train on a girl," meaning that they were both having sex with her. The other apartment residents, A8 and A11, were in their bedrooms.

A2 and the recruit left the bedroom smiling and laughing. A10 is not sure whether they exited the bedroom at the same time or at different times. A2 and the recruit both said things that confirmed that they had had sex with the woman. A2 said something like, "you can all go in and fuck if you want to." Based on what A2 said, A10 understood that the woman was willing to have sex with other men.

After A2 left the bedroom, A6 immediately entered the bedroom and shut and locked the door. A6 was in the bedroom alone with RS for about five minutes. A10 and A2 stayed in the hallway outside the bedroom. A10 tried to open the door to A2 bedroom while RS and A6 were having sex inside, but was unable to open the door because it was locked. A10 could not hear anything that was happening inside the bedroom.

After A6 left the bedroom, A10 went into the bedroom to "be nosy and see who the girl was." RS was on the bed with a blanket wrapped around her. A10 could see that she did not have any clothes on. RS had her phone and appeared to be scrolling through Instagram or another social media application. A10 introduced himself to RS and asked her in a joking manner what had happened. RS responded with a little chuckle. RS did not seem afraid, upset, confused or intoxicated.

A10 did not ask RS for any sexual contact or discuss having any sexual contact with RS. He did not want to have sex with RS because he has a girlfriend. A10 did not tell RS that it would be better if she did not remember his name. (However, earlier in his EOAA interview, A10 had stated that, "he wishes RS didn't remember his damn name.")

Then A1, A5 and A4 appeared at the bedroom door. A10 left the bedroom and immediately left the apartment. He did not enter the living room or speak with A6. When

A10 left apartment B, A6 A2 and A11 were in the hallway. A1, A4 and A5 were in the bedroom with RS. A woman who was visiting A11 was in the bathroom.

A10 was in apartment B for around thirty minutes. He was in the bedroom with RS for around 1-2 minutes. While A10 was in apartment B, RS was never alone in the bedroom. A10 did not hear RS say or do anything to indicate that she did not want to engage in sexual activity. A10 did not witness any people repeatedly turning on or off the bedroom lights, repeatedly opening and closing the bedroom door, yelling things into the bedroom or discussing who would have sex with RS next.¹²

2. A10 statements to the police

The Police Case Report's summary of A10 statements to the police differs from the statements that A10 made to EOAA in the following ways:

First, according to the Police Case Report, A10 reported that he entered A2 bedroom and spoke with RS before A6 had sex with RS. When speaking with EOAA, A10 reported that he entered the bedroom and spoke with RS after A6 had sex with RS. A10 reported that he told the police this as well.

Second, according to the Police Case Report, A10 reported that he stood next to A6 in the bedroom with RS. When speaking with EOAA, A10 reported that he entered the bedroom and spoke with RS after A6 had left the bedroom.

3. Witnesses reported the following relevant information related to A10 :

- A12 reported the following: He did not see A10 in apartment B that night. A10 later told A12 that A10 tried to have sex with RS in A2 bedroom but that she refused.
- A6 reported the following: A10 decided not to have sex with RS because he "wasn't feeling it." A6 and A10 left A2 bedroom and then walked into the front room together. A6 and A10 talked for a short while and then A10 left apartment B and did not return. However, A6 also reported that he was "chilling with A10 and A11 in the living room for the rest of the night."
- A2 reported the following: He singled out A10 in his message to the Empire group at 4:17am ("Damn A10 all 3 them n****s hitting rn") because A10 had just left apartment B. A2 does not know whether A10 went into the bedroom with RS.
- A5 reported the following: After meeting RS in A2 bedroom, A5 left the bedroom and entered the living room. A10 was in the living room at that time.

¹² EOAA asked RS whether the events described by A10 occurred. RS denied the portions of A10 account that are within her scope of knowledge and that differ from her account provided above. For example, RS denies scrolling through Instagram on her phone or "chuckling" in response to a question from A10.

A10 : Analysis and Conclusions

1. Sexual assault

RS does not specifically recall any sexual contact with A10 . However, RS does not recall significant portions of her time in apartment B and believes that many men had sexual contact with her that she cannot identify. RS does recall that four men (including A1 A5 and two unknown men) participated in a group sexual encounter with her. We considered whether A10 was one of the men in this group because he was present in apartment B at the time and because of a message sent to the Empire messaging group.

Specifically, A2 sent a message to the Empire group at 4:17am stating: "Damn A10 all 3 them n****s hitting rn." ("Rn" is generally an abbreviation for "right now.") A2 explained to EOAA that he addressed the message to A10 because A10 had just left the apartment.

A2 further explained that the three men in his message referred to A1, A5 and A4, but that he was "amplifying" and that these three men did not actually have sex with RS at the same time.

However, we find the more plausible meaning of A2 message to be that A1 A5 and A4 were having sexual contact with RS at the same time. We considered the possibility that A2 message was also intended to convey that A10 participated in the sexual encounter with A1 A5 A4 and RS. However, we did not find other evidence to support this possibility, and ultimately find insufficient evidence to conclude that A10 had sexual contact with RS.

2. Sexual harassment

We considered whether A10 engaged in conduct that violates the sexual harassment policy.

A10 reported that he tried to open the door to A2 bedroom while RS and A6 were having sex inside, but was unable to open the door because it was locked. A10 also reported that he entered A2 bedroom after A6 finished sexual contact with RS.

A10 was aware that RS had had sex with men in the bedroom and saw that RS was not wearing any clothes, although she had wrapped a blanket around her body. There is also some evidence that A10 asked RS for sexual contact and that she refused.

We find that A10 entering into the bedroom was conduct of a sexual nature, given that RS was undressed and A10 knowledge that several men had just had sex with her. We also find credible RS report that she did not want men to enter the room and was therefore shielding her body with a blanket. However, while this is a close case, we ultimately do not find that A10 conduct was sufficiently egregious to violate the sexual harassment policy.

3. Conclusions

In conclusion, we do not have sufficient evidence to conclude that A10 violated any University policies.

IV.

A4

Evidence gathered from A4 and others

1. A4 reported the following:

A4 is a second-year member of the University's football team. A4 lives with A5, A9, and another football team member in the Marshall apartment building. After the first football game, A4 went to several gatherings at the Radius. At some point, A4 and A5 were leaving a gathering in apartment A. As they left, they ran into A1. A1 told them that A2 had just told him to come upstairs to A2 apartment. A1 did not tell A4 and A5 what was happening in A2 apartment.

When the three men arrived in A2 apartment, A2 bedroom door was open and his bedroom light was on. A4 heard people in the apartment's living room area. A4, A1 and A5 walked directly into A2 bedroom.

When they entered, RS was sitting on the bed. She was wrapped in a blanket or sheet but not wearing any clothes. A6 and A10 were also in the bedroom. RS was talking and laughing with the men. She seemed fine and was not upset or confused. A4 could not tell whether she had been drinking alcohol. A4 does not recall whether RS had her phone.

A4 assumed that RS had had sex with someone on the football team. RS flirted with the men in the bedroom, but A4 did not know whether she was willing to have sex with other men. No one told A4 that RS was willing to have sex with other men.

After a few minutes, the other men left the bedroom, leaving A4 and RS alone. A4 was standing up and RS told him to sit on the bed. RS began rubbing A4 thigh with her hand. RS asked A4 whether he was going to turn off the light. A4 turned off the light and returned to the bed. RS put her hands inside A4 pants. A4 pulled his pants down but left his shirt on. RS took A4 penis in one hand and began giving A4 oral sex. A4 was seated on the bed and RS was bent over him on her hands and knees. A4 stopped RS one or two minutes later without ejaculating. A4 told RS that he did not have a condom. However, he actually stopped the sexual encounter because he was involved with another woman and felt guilty.

A4 then put his pants back on, left the bedroom and immediately left the apartment. He returned to apartment A. Later that night, A5 also returned to apartment A. Then, A4 and A5 returned to their apartment at the Marshall together.

This was the only sexual encounter that A4 had with RS. RS did not say or do anything to indicate that she did not want to have this sexual contact with A4. A4 did not take RS head and lead it to his penis. A4 did not say that they could just have oral sex, that this was no big deal or that it would be over soon. A4 did not say that he did not understand why RS would have sex with others but not with him; at that point, A4 did not know that RS had had sex with others.

A4 was in apartment B for a total of around 8-10 minutes. While A4 was in apartment B, RS never asked about her clothes or tried to retrieve her clothes. RS never asked to see A2 told anyone to stop sending people into the room or told anyone that she hated them. No men crowded around the bedroom door, repeatedly turned on and off the bedroom lights or repeatedly opened and shut the bedroom door. No men yelled things into the bedroom while RS was having sex, cheered for men having sex with RS or discussed who would have sex with RS next.¹³

2. A4 statements to the police

The Police Case Report's summary of A4 statements to the police differs from the statements that A4 made to EOAA in the following ways:

First, according to the Police Case Report, A4 reported that he ended his sexual interaction with RS by stating that he felt guilty about having sex with RS because he was "seeing another girl." When speaking with EOAA, A4 denied that he said this to RS or told the police that he said this to RS, although this was his actual reason for ending the sexual interaction.

Second, according to the Police Case Report, A4 reported that he asked RS if she "was ok with what was about to happen and that she responded with an affirmative." When speaking with EOAA, A4 denied that this conversation with RS occurred or that he told the police that this conversation occurred.

Third, according to the Police Case Report, A4 reported that someone informed him when he entered apartment B that a woman in A2 bedroom was allowing sexual interactions and that several of his teammates had already had sexual contact with her. When speaking with EOAA, A4 denied that this conversation happened or that he told the police that this conversation happened.

3. Witnesses reported the following relevant information related to A4

- A6 reported the following: When A6 left the bedroom after having sex with RS, A1, A5 and A4 were in the hallway talking about who would have sex with RS next.
- A2 reported the following: At 4:17am, he sent a message to the Empire group stating: "Damn A10 all 3 them n****s hitting rn." A2 intended to convey that three men – A1, A5 and A4 – were having sex with RS at once. However, A2 was "amplifying" or exaggerating. Actually, the three men were only talking to RS when they were in the bedroom together and not having sex with her.

¹³ EOAA asked RS whether the events described by A4 occurred. RS denied the portions of A4 account that are within her scope of knowledge and that differ from her account provided above. For example, RS denies that she rubbed A4 thigh, put her hands inside his pants or did anything else to initiate a sexual encounter with him.

- A12 reported the following: When A12 arrived at apartment B, he saw A1 and A4 leaving A2 bedroom. A1 and A4 joined A2, A6, A11, and the recruit on the living room couch. A12 understood that A5 was still in the bedroom with RS. A12 understood that A1, A4 and A5 had just been in the bedroom with RS together. Someone told A12 that they were "training her" and that she had agreed. ("Training her" appears to refer to "running a train," or multiple men lining up to have sex with a woman.)

At one point, A2, A6, A11, A4, A1 the recruit, A3 and A12 gathered around the open doorway to A2 bedroom. A5 was having sex with RS inside the bedroom. One of the men was turning on and off the bedroom lights. The men were discussing who would have sex with RS next. The men were also "talking and saying things," although A12 does not remember any specific comments or conversations.

At another point, these men were listening to A5 and RS engage in sexual contact from outside of the bedroom. A12 recalled, "from the stuff she said, it didn't seem like she was into it. She said something and [the men present] decided it was messed up . . . She said something that made it seem like it wasn't the right thing to be doing. They told A2 to get A5 out of the room. A2 said, 'no man, she straight.'" A12 does not recall what RS said that caused this concern. RS later said something else that caused the men concern. She possibly said, "don't send any more people in." A2 then said, "this is the last one."

- Witness-5 [REDACTED] and RS friend) reported the following: Witness-5 communicated with A4 for a short time after the night of September 1-2. A4 told Witness-5 over the phone that he walked into A2 bedroom, RS gave him a blowjob and then he left. A4 said that someone had just walked out of the bedroom and that he entered to see what was going on.
- A2 reported the following: A1 and A4 were in apartment B while A5 was having sex with RS. A1 and A4 left apartment B at some point thereafter and then returned together to get A5. A1, A5, A4 and RS left apartment B at the same time. A4 had a conversation with RS as they left.
- A1 reported the following: After A1 finished having sex with RS, he went to apartment A. He did not see A4 there. After about ten minutes, A1 returned to apartment B. According to the Police Case Report, A1 stated that A4 was present in apartment B when A1 returned. Conversely, A1 told EOAA that A4 was not present in apartment B when A1 returned. A1 reported that he and A5 ultimately left apartment B together.
- A5 reported the following: A4 left the apartment after having sex with RS. A5 did not see A4 again that night in apartment B. A5 later met up with A4 in apartment A.

- Witness-6 (a football team member) reported the following: He lives in apartment A. A4, A1 and A5 came to apartment A from apartment B in the early morning hours of September 2.

A4 :: Analysis and Conclusions

1. Credibility

RS and A4 accounts of their sexual contact with one another differ markedly. Given the available evidence, it is not possible to reconcile all of the discrepancies. However, we generally find RS account to be more credible for the reasons detailed in the "Credibility of the Parties" section above, and also because A4 account is at times inconsistent with credible reports from other accused students and witnesses. For example:

- A4 reported that he immediately left apartment B after RS gave him oral sex. He further reported that he did not return to apartment B that night. However, A2 and A12 reported that A4 remained in apartment B after having sex with RS.
- RS reported that men crowded around the bedroom door and turned on and off the light while other men had sex with her. A4 denied that this occurred. However, A12 reported that he and six other men, including A4 gathered around the bedroom doorway "saying things" and turning on and off the lights while RS was having sex with A5.
- A4 reported that he did not see A12 in apartment B. However, A12 reported that he entered the living room while A4 and four others were sitting on the couch.
- A4 reported that he did not have any conversations with A1 and A5 about who would have sex with RS and in what order. A6 reported hearing A1, A5 and A4 talking about who would have RS next.

2. Sexual assault

a. One-on-one sexual contact

The first issue is whether RS affirmatively consented to oral sex with A4 when she was alone with him in the bedroom. According to A4 account, RS provided affirmative consent by: (1) rubbing A4 thigh; (2) asking A4 whether he was going to turn off the light; (3) putting her hands inside A4 pants; and (4) taking A4 penis in one hand and performing oral sex.

In contrast, according to RS account, RS repeatedly told A4 that she did not want to have any sexual contact with him. A4 took off his pants, grabbed RS head, led it to his penis and told her something like it would be over soon. RS reported that she gave A4 oral sex, but only because she felt that she had no choice and was unable to leave the situation. According to RS, she had just experienced a violent sexual assault by A6. Moreover around that time, a crowd of men gathered by the door and began discussing who would have sex

with RS next. RS yelled at the crowd that she hated them and that she did not want to have sex with additional people.

Ultimately, given our assessment of RS greater credibility, we find it more likely than not that her account of this sexual contact is generally more accurate than A4. Specifically, we find credible and believable RS belief that she needed to give A4 oral sex in order to safely leave the situation, given her prior experience with A6, the crowd of men at the door and A4 refusal to accept RS repeated statements that she did not want sexual contact with him. In sum, we find that RS did not willingly give oral sex to A4 and that a reasonable person would have known that she had not consented.

b. Group sexual contact

The second issue is whether A4 had another sexual encounter with RS and, if so, whether RS affirmatively consented to this additional sexual contact. A4 denied that he engaged in any sexual encounter with RS other than the oral sex described above. However, the following evidence indicates that A4, A1 and A5 together engaged in a sexual encounter with RS.

First, RS reported in significant detail that A1, A5 and two unknown men had sex with her simultaneously. In particular, she reported that A1, A5 and one unknown man took turns putting their penises in her mouth while the other unknown man had vaginal intercourse with her. She reported that A1 then had sex with her alone, possibly while others were in the room, and that A5 then had sex with her alone.

Second, A12 reported seeing A1 and A4 exit A2 bedroom together, leaving A5 to have sex with RS alone in the bedroom. A12 understood that all three men had just been in the bedroom with RS together. This report is consistent with RS account, in which A5, A1 and others had sex with her simultaneously, then A1 had sex with her while others (such as A4 and A5) were possibly in the bedroom, and then A5 had sex with her alone.

Third, A2 sent a message to the Empire group at 4:17am stating: "Damn A10 all 3 them n****s hitting m." ("Rn" is generally an abbreviation for "right now.") A2 explained to EOAA that he addressed the message to A10 because A10 had just left the apartment. A2 further explained that the three men in his message referred to A1, A5 and A4 but that he was "amplifying" and that these three men did not actually have sex with RS at the same time. However, we find the more plausible meaning of A2 message to be that A1, A5 and A4 were having sexual contact with RS at the same time.

Finally, many of the accused students' accounts to the police and EOAA about A1, A5 and A4 are particularly contradictory. For example:

1. Accounts differ about the order in which A5, A1 and A4 had sex with RS. According to the Police Case Report, A2 reported the following order in which these three men had sex alone in the bedroom with RS: A1, A4, A5. In contrast, A2 reported to EOAA that he did not know whether A1 or A4 had sex with

RS first. According to the Police Case Report, A5 reported that he had sex with RS "after A4 ." A5 reported a different order to EOAA: A4 , A1 A5

2. Accounts differ about whether A4 and A1 left the bedroom by themselves or together -- A12 reported that A1 and A4 left the bedroom together while A5 remained in the bedroom and had sex with RS . A4 reported that he left the bedroom alone after having sex with RS and did not reenter the bedroom. A1 reported that he left the bedroom twice: first leaving A4 inside the bedroom to have sex with RS and later leaving the bedroom alone after he had sex with RS , at which point A4 was no longer in apartment B .
3. Accounts differ about whether A4 , A1 and A5 remained in apartment B after having sex with RS -- A1 reported leaving apartment B after having sex with RS and returning only after A5 had finished having sex with RS . However, A3 , A2 , A12 and A11 each reported seeing A1 in apartment B during the time period when A5 was having sex with RS

A4 reported that he immediately left apartment B after RS gave him oral sex and that he did not return to apartment B that night. However, A2 and A12 reported that A4 remained in apartment B after having sex with RS . According to the Police Case Report, A1 stated that he saw A4 in apartment B after he and A5 had both finished having sex with RS . However, A1 conversely told EOAA that, after he had sex with RS , he did not see A4 again that night in apartment B .

A5 reported that he left apartment B immediately after having sex with RS . A6 reported that A5 was still in apartment B when RS left.

4. Accounts differ about whether A1 A5 and A4 ultimately left apartment B together -- A1 reported that he left the apartment for the last time that night with A5 . A5 reported leaving the apartment alone. A4 also reported leaving the apartment alone. A2 reported that A1 , A5 and A4 left the apartment together at the same time as RS . A6 reported that A1 and A5 remained in the apartment when RS left.

Together, these conflicting accounts about the conduct of A1 A5 and A4 suggest that they and other accused students attempted to conceal information about these three men's conduct that night.

Given the totality of this evidence, we find it more likely than not that A1 A5 and A4 had sexual contact with RS at the same time, and that A4 either forced RS to give him oral sex or to have vaginal intercourse during this group sexual contact. RS reported that she did not consent to this sexual encounter in any way. She further reported that the men were forceful and responded to her pleas that she was in pain and that she wanted to stop by flipping her into a different position, telling her that it would be over soon and/or using more force. Given that significant portions of RS account align with the other evidence described above, and our

general assessment of RS credibility as described in the "Credibility of the Parties" section above, we find her account of this sexual encounter to be credible.¹⁴

3. Sexual harassment

The evidence indicates that A4 crowded around A2 bedroom door with other accused students to watch RS engage in sexual conduct. Multiple accused students reported that A4 remained in apartment B after he received oral sex with RS in contrast to A4 own report that he left apartment B. A12 reported that A4 was among the men watching RS sexual contact with A5 from the bedroom doorway. We understand that A4 denies this conduct. However, based on the numerous discrepancies in A4 reports to EOAA, as well as our assessment in the "Credibility of the Parties" section above, we find his denial to be not credible.

We find that this conduct violated the University's sexual harassment policy because it was sexual in nature, unwelcome to RS and had the following impacts on RS: (1) unreasonably interfering with RS academic performance; (2) unreasonably interfering with RS participation in University activities, including her participation [REDACTED] and (3) creating an intimidating, hostile and offensive environment for RS on campus and off-campus in her participation [REDACTED]. We do not detail the specific impacts on RS in order to preserve her privacy.

4. Conclusions

In conclusion, we find that A4 violated the following University policies:

1. Administrative Policy: *Sexual Harassment*;
2. Administrative Policy: *Sexual Assault, Stalking and Relationship Violence* (sexual assault provision);
3. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 6 (Harm to Person). We find that A4 violated this Subdivision by engaging in harassing and assaulting behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A4 violated the sexual harassment and sexual assault portions of this Subdivision.
 - o Subdivision 19 (Violation of University Rules). We find that A4 violated the Administrative Policies: *Sexual Assault, Stalking and Relationship Violence* and *Sexual Harassment*.

¹⁴ We also considered RS report that four men participated in this sexual encounter. However, we were unable to identify any other participant.

V. A1

Evidence gathered from A1 and others

1. A1 reported the following:

A1 is a second-year member of the University's football team. A1 lives in the Rail apartment building. After the first football game, A1 spent time in his apartment. He then went to apartment A in the Radius. After about twenty minutes in apartment A, A1 received a Facetime call from A2. A2 said that he and the recruit had just finished having sex [REDACTED]. A2 did not invite A1 to his apartment. However, A1 was curious and decided to visit A2 apartment.

As A1 left apartment A, he ran into A5 and A4. The three men went to apartment B together. A1 did not tell them that a woman in apartment B had just had sexual contact with A2 and the recruit. Upon arriving in apartment B, A1 saw A2 walking down the hallway away from his bedroom and toward the living room. A2's bedroom light was on. A6 and A10 were inside A2 bedroom with RS. A1 had previously met RS on two occasions.

RS was sitting on the bed and talking to the men. She was having a normal conversation and laughing. She did not seem scared, intoxicated, confused or upset. RS was wrapped in a blanket and A1 could tell that she did not have clothes on. At some point, RS added A1 as a Snapchat friend by positioning her phone's camera over A1 phone's screen. A1 does not recall anyone holding RS phone other than her. A1 did not call RS "my baby girl." A1 does not remember RS asking how long she had been in the bedroom.

A6 and A10 left the bedroom, possibly at the same time. A1 and A5 left the bedroom next. No one told A1 that RS was willing to have sex with more men. A1 did not have any conversations with other men about who would have sex with RS and in what order. However, A1 was hoping to have sex with RS next. He went into A6 bedroom and got a condom. At no point did A1 leave the apartment to get condoms.

A4 was alone in the bedroom with RS with the door closed for around two minutes. A1 entered the bedroom after A4 left. RS appeared excited to see A1. She did not seem confused or upset. RS said, "A1 I always wanted to fuck you but you were always fucking [your ex-girlfriend]." A1 replied that he was not with his ex-girlfriend now. RS told A1 to turn off the light. A1 did so and then walked to the bed. RS pulled his pants down to his ankles. While A1 was standing up, RS sat on the edge of the bed and gave A1 oral sex. She held his penis with one hand and put her other hand on his leg. A1 was not wearing a condom.

A1 ended oral sex and said that he wanted to have vaginal sex. RS asked whether he had a condom. A1 then had vaginal sex with RS from on top of her while wearing a condom.

A1 hands were on the bed, and not on RS arms or shoulders. A1 then had vaginal sex with RS from behind her, with RS on her hands and knees. When asked whether he would describe the sex as fast, rough or hard, A1 responded that it was "hard." RS moaned at times

during this sexual encounter but did not say anything. She also grabbed his arms and back while he had vaginal sex from on top of her. RS did not do anything that made A1 think that she did not want this sexual activity. While A1 was in the bedroom with RS, he could hear people in the hallway outside of the bedroom door.

After the sexual contact ended, A1 left the bedroom. He had been in the bedroom alone with RS for around 10 minutes. He and RS did not have any further conversation or any other sexual encounters. A1 went into the bathroom to dispose of his condom. He saw A3 in the hallway near the living room, but no one else. A1 then left apartment B and went to apartment A.

After about ten minutes, A1 returned to apartment B for some reason that he cannot remember. When A1 reentered apartment B, A5 was leaving A2 bedroom. A3 and A2 were talking in the hallway. A1 and A5 then left apartment B together. A1 returned to his apartment at the Rail apartment building.

While A1 was in apartment B, RS never asked about her clothes or tried to retrieve her clothes. RS never asked to see A2 told anyone to stop sending people into the room or told anyone that she hated them. No men repeatedly turned on and off the bedroom lights or repeatedly opened and shut the bedroom door. No men yelled things into the bedroom while RS was having sex, cheered for men having sex with RS or discussed who would have sex with RS next.

A1 reported other information about RS alleged sexual activity prior to September 2, which EOAA considered and found to be not relevant to the question of whether any of the accused students' conduct on September 2 violated University policy.¹⁵

2. A1 statements to the police

The Police Case Report's summary of A1 statements differs from the statements that A1 made to EOAA in the following ways:

First, according to the Police Case Report, A1 reported that someone in apartment B told him that RS was "down with it," meaning that she was willing to have sex with others." When speaking with EOAA, A1 reported that no one told him that RS was "down with it" or willing to have sex with more men.

Second, according to the Police Case Report, A1 reported that he "dropped his pants" after RS began to rub his lower leg. When speaking with EOAA, A1 reported that RS pulled his pants down to his ankles.

3. Witnesses reported the following relevant information related to A1

¹⁵ EOAA asked RS whether the events described by A1 occurred. RS denied the portions of A1 account that are within her scope of knowledge and that differ from her account provided above. For example, RS denies stating that she had always wanted to have sex with A1 having any conversations about using a condom and pulling down A1 pants.

- A12 reported the following: When A12 arrived at apartment B, he saw A1 and A4 leaving A2 bedroom. A1 and A4 joined A2, A6, A11, and the recruit on the living room couch. A12 understood that A5 was still in the bedroom with RS. A12 believes that A1, A4, and A5 had just been in the bedroom with RS together. Someone told A12 that they were "training her" and that she had agreed. ("Training her" appears to refer to "running a train," or multiple men lining up to have sex with a woman.)

At one point, A2, A6, A11, A4, A1 the recruit, A3 and A12 gathered around the open doorway to A2 bedroom. A5 was having sex with RS inside the bedroom. One of the men was turning on and off the bedroom lights. The men were discussing who would have sex with RS next. The men were also "talking and saying things," although A12 does not remember any specific comments or conversations.

At another point, these men were listening to A5 and RS engage in sexual contact from outside of the bedroom. A12 recalled, "from the stuff she said, it didn't seem like she was into it. She said something and [the men present] decided it was messed up . . . She said something that made it seem like it wasn't the right thing to be doing. They told A2 to get A5 out of the room. A2 said, 'no man, she straight.'" A12 does not recall what RS said that caused this concern. RS later said something else that caused the men concern. She possibly said, "don't send any more people in." A2 then said, "this is the last one."

- A6 reported the following: When A6 left the bedroom, A1, A5 and A4 were in the hallway talking about who would have sex with RS next. At some point, A1 and A5 briefly left apartment B to get some condoms.
- Witness-3 reported the following: While in apartment A after the first football game, Witness-3 witnessed A1 receive a brief Facetime call. Witness-3 understood from the call that someone was [REDACTED]. A1 left apartment A shortly afterwards.
- A3, A2, A12 and A11 reported that A1 was present in apartment B during the time period when A5 was alone with RS in the bedroom.

A1 *Analysis and Conclusions*

1. Credibility

RS and A1 accounts of their sexual contact with one another differ markedly. Given the available evidence, it is not possible to reconcile all of the discrepancies. However, we generally find RS account to be more credible for the reasons detailed in the "Credibility of the Parties" section above, and also because A1 account is at times inconsistent with credible reports from other accused students and witnesses. For example:

- A1 reportedly told the police that: (1) he took off his own pants before RS gave him oral sex; and (2) that someone in apartment B informed him that RS was willing to have sex with others. Conversely, in his interview with EOAA, A1 denied both of these facts.
- RS reported that men crowded around the bedroom door and turned on and off the light while other men had sex with her. A1 denied that this occurred. However, A12 reported that he and six other men, including A1 gathered around the bedroom doorway "saying things" and turning on and off the lights while RS was having sex with A5
- A1 denied being in apartment B while A5 was alone in the bedroom with RS. However, A3, A2, A12 and A11 each reported seeing A1 in apartment B during this time period.
- A1 reported that he did not see A12 in apartment B that night. However, A12 reported seeing A1 there. According to reports from accused students, there were only around ten people in the apartment at the time, so it is unlikely that A1 would not have seen A12.

2. Sexual assault

a. One-on-one sexual contact

The first issue is whether RS affirmatively consented to oral and vaginal sex with A1 during their one-on-one sexual encounter. According to A1 account, RS provided affirmative consent by: (1) telling A1 that she had always wanted to have sex with him; (2) telling A1 to turn off the bedroom lights; (3) pulling down A1 pants and giving A1 oral sex; and (4) grabbing his arms and back while he was having vaginal sex from on top of her; and (5) moaning at times during vaginal sex.

In contrast, according to RS account, A1 had rough, hard, fast and painful vaginal sex with her. RS repeatedly asked him to stop, but he responded by dismissing her pleas, flipping her into another position and becoming more forceful. A1 held RS down by her shoulders and upper arms while he had vaginal sex from on top of her. RS does not recall giving A1 oral sex during their one-on-one sexual encounter.

Ultimately, given our assessment of RS greater credibility, we find it more likely than not that her account of the vaginal intercourse is generally more accurate than A1. Specifically, we find it likely that RS pled for A1 to stop the sexual contact and that he responded by holding her down and using more force. Given this, we find that RS did not affirmatively consent to vaginal intercourse with A1.

b. Group sexual contact

The second issue is whether A1 engaged in a group sexual encounter with RS and other men, and, if so, whether RS affirmatively consented to this sexual contact. A1 denied that he engaged in any sexual encounter with RS other than the oral and vaginal sex described above.

However, the following evidence indicates that A4, A1 and A5 together engaged in a sexual encounter with RS.

First, RS reported in significant detail that A1, A5 and two unknown men had sex with her simultaneously. In particular, she reported that A1, A5 and one unknown man took turns putting their penises in her mouth while the other unknown man had vaginal intercourse with her. She reported that A1 then had sex with her alone, possibly while others were in the room, and that A5 then had sex with her alone.

Second, A12 reported seeing A1 and A4 exit A2 bedroom together, leaving A5 to have sex with RS alone in the bedroom. A12 understood that all three men had just been in the bedroom with RS together. This report is consistent with RS account, in which A5, A1 and others had sex with her simultaneously, then A1 had sex with her while others (such as A4 and A5) were possibly in the bedroom, and then A5 had sex with her alone.

Third, A2 sent a message to the Empire group at 4:17am stating: "Damn A10 all 3 them n****s hitting rn."¹⁶ A2 explained to EOAA that he addressed the message to A10 because he had just left the apartment. A2 further explained that the three men in his message referred to A1, A5 and A4 but that he was "amplifying" and that these three men did not actually have sex with RS at the same time. However, we find the more plausible meaning of A2 message to be that A1, A5 and A4 were having sexual contact with RS at the same time.

Finally, many of the accused students' accounts to the police and EOAA about A1, A5 and A4 are particularly contradictory. For example:

1. Accounts differ about the order in which A5, A1 and A4 had sex with RS — According to the Police Case Report, A2 reported the following order in which these three men had sex alone in the bedroom with RS: A1, A4, A5. In contrast, A2 reported to EOAA that he did not know whether A1 or A4 had sex with RS first. According to the Police Case Report, A5 reported that he had sex with RS "after A4," A5 reported a different order to EOAA: A4, A1, A5.
2. Accounts differ about whether A4 and A1 left the bedroom by themselves or together — A12 reported that A1 and A4 left the bedroom together while A5 remained in the bedroom and had sex with RS. A4 reported that he left the bedroom alone after having sex with RS and did not reenter the bedroom. A1 reported that he left the bedroom twice: first leaving A4 inside the bedroom to have sex with RS and later leaving the bedroom alone after he had sex with RS, at which point A4 was no longer in apartment B.
3. Accounts differ about whether A4, A1 and A5 remained in apartment B after having sex with RS — A1 reported leaving apartment B after having sex with RS and returning only after A5 had finished having sex with RS. However, A2

¹⁶ "rn" is generally an abbreviation for "right now."

A2 A12 and A11 each reported seeing A1 in apartment B during the time period when A5 was having sex with RS.

A4 reported that he immediately left apartment B after RS gave him oral sex and that he did not return to apartment B that night. However, A2 and A12 reported that A4 remained in apartment B after having sex with RS. According to the Police Case Report, A1 stated that he saw A4 in apartment B after he and A5 had both finished having sex with RS. However, A1 conversely told EOAA that, after he had sex with RS, he did not see A4 again that night in apartment B.

A5 reported that he left apartment B immediately after having sex with RS. A6 reported that A5 was still in apartment B when RS left.

4. Accounts differ about whether A1 A5 and A4 ultimately left apartment B together -- A1 reported that he left the apartment for the last time that night with A5 A5 reported leaving the apartment alone. A4 also reported leaving the apartment alone. A2 reported that A1 A5 and A4 left the apartment together at the same time as RS. A6 reported that A1 and A5 remained in the apartment when RS left.

Together, these conflicting accounts about the conduct of A1, A5 and A4 suggest that they and other accused students attempted to conceal information about these three men's conduct that night.

Given the totality of this evidence, we find it more likely than not that A1 A5 and A4 had sexual contact with RS at the same time, and that A1 forced RS to give him oral sex during this sexual contact. RS reported that she did not consent to this sexual encounter in any way. She further reported that the men were forceful and responded to her pleas that she was in pain and that she wanted to stop by flipping her into a different position, telling her that it would be over soon and/or using more force. Given that significant portions of RS account align with the other evidence described above, and our general assessment of RS credibility as described in the "Credibility of the Parties" section above, we find her account of this sexual encounter to be credible.¹⁷

3. Sexual harassment

The evidence indicates that A1 crowded around A2 bedroom door with other accused students to watch RS engage in sexual conduct. In contrast to A1 own report, multiple accused students reported that A1 remained in apartment B for some period after having sex with RS. A12 reported that A1 was among the men watching RS sexual contact with A5 from the bedroom doorway. We understand that A1 denies this conduct. However, based on the numerous discrepancies in A1 reports to EOAA, as well as our assessment in the "Credibility of the Parties" section above, we find his denial to be not credible.

¹⁷ We considered RS report that four men participated in this sexual encounter. However, we were unable to identify any other participant.

We find that this conduct violated the University's sexual harassment policy because it was sexual in nature, unwelcome to RS and had the following impacts on RS :: (1) unreasonably interfering with RS academic performance; (2) unreasonably interfering with RS participation in University activities, including her participation [REDACTED] and (3) creating an intimidating, hostile and offensive environment for RS on campus and off-campus in her participation [REDACTED]. We do not detail the specific impacts on RS in order to preserve her privacy.

4. Conclusions

In conclusion, we find that A1 violated the following University policies:

1. Administrative Policy: *Sexual Harassment*;
2. Administrative Policy: *Sexual Assault, Stalking and Relationship Violence* (sexual assault provision);
3. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 6 (Harm to Person). We find that A1 violated this Subdivision by engaging in harassing and assaulting behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A1 violated the sexual harassment and sexual assault portions of this Subdivision.
 - o Subdivision 19 (Violation of University Rules). We find that A1 violated the Administrative Policies: *Sexual Assault, Stalking and Relationship Violence* and *Sexual Harassment*.

VI. A5

Evidence gathered from A5 and others

1. A5 reported the following:

A5 is a second-year member of the University's football team. A5 lives with A4 A9 and another football team member in the Marshall apartment building. At some point after the first football game, A5 and A4 visited fellow football players in apartment A of the Radius. A5 A4 left apartment A after about fifteen minutes, and planned to head back to their apartment. As A5 and A4 left apartment A, they ran into A1. A1 said that he was going upstairs to A2 apartment, and A5 and A4 decided to accompany him. A5 thought there might be a party in A2 room. A1 did not say that there was a sexual encounter occurring in A2 room, and A5 did not otherwise know this.

When A5 entered apartment B, he saw A2 in the apartment's hallway. He also saw A10 talking to someone in A2 bedroom. A5, A4 and A1 peeked into the bedroom. A woman (who A5 later learned was RS) was in the bed wrapped in a sheet and holding her phone. A5 could tell that she did not have any clothes on. Her clothes were on the floor more than an arm's reach from the bed. RS recognized A1 and said his name. She asked who the other men were, and A5 and A4 introduced themselves. RS did not appear to be drunk. She acted "normal" and had a regular conversation with A5 and the other men.

A10 left the bedroom. Soon after, A5 left the bedroom and joined A10 and A2 in the living room area. A2 said that RS [REDACTED] that he had met in apartment A.

A2 said that he and the recruit had had sex with RS. No one told A5 that RS was willing to have sex with him or other men. A5 did not have any conversations with A1 A4 or others about who else would have sex with RS and in what order.

A5 watched television for a while in the living room. A4 was the bedroom alone with RS. He came out around five minutes later and left the apartment. A1 then entered the bedroom and had sex with RS. A1 then left the apartment. A5 could not hear what was happening in the bedroom during this time period. A5 never left the apartment to get condoms.

A5 then entered the bedroom and RS said his name. The lights were on and RS was lying on the bed. RS engaged in normal conversation. She did not appear upset or confused. She was not smiling but she "lit up" when she said his name. At some point, A5 shut the bedroom door. RS said that A5 could not have sex with her unless he wore a condom. A5 then asked RS for oral sex, and RS said yes. A5 stood by the bed. While lying on the bed, RS used her hands to guide his penis into her mouth. RS gave him oral sex for around five minutes, while grabbing onto his hips. During this time, A5 hands were on top of her head.

A5 ended the oral sex without ejaculating. He then put on a condom from his wallet. RS rolled from her side to her back. Neither spoke. A5 knew that RS wanted to have vaginal sex because she had said that they could have sex so long as he used a condom, and because

RS turned onto her back after completing oral sex. A5 began having vaginal sex from on top of RS. His hands were on the bed. RS was not speaking. Then, A5 had vaginal sex with RS from behind her, with RS on her hands and knees. A5 removed his penis from RS vagina and removed the condom just prior to ejaculating. He then ejaculated onto her bottom.

A5 then began to get dressed. RS asked him to turn on the light, which he did. RS got out of bed, retrieved her clothes and began to put them on. RS told A5 to "hit her up." A5 understood this to mean that he should contact her. A5 responded that they were already following one another on Instagram. (A5 reported to EOAA that he had never met RS before that night and did not know how they had come to follow one another on Instagram.) RS responded that he should contact her through Instagram.

By this point, RS was fully dressed. A5 did not see any condom wrappers or used condoms on the floor or elsewhere in the bedroom. A5 left the bedroom. A5 and RS had been in the bedroom alone together for 10-15 minutes. During that time, RS did not say or do anything that indicated that she did not want to engage in these sexual activities. No one else entered the bedroom during that time. A5 did not have any other sexual encounters with RS.

While A5 was in apartment B, there were never men standing near the doorway to the bedroom. RS never asked about her clothes or tried to retrieve her clothes. RS never asked to see A2 told anyone to stop sending people into the room or told anyone that she hated them. No men repeatedly turned on and off the bedroom lights or repeatedly opened and shut the bedroom door. No men yelled things into the bedroom while RS was having sex, cheered for men having sex with RS or discussed who would have sex with RS next.

After leaving the bedroom, A5 flushed his condom down the toilet. A5 saw A2 in the hallway and told him that he was about to leave. A5 then left the apartment and returned to apartment A to find A4. He and A4 then returned together to their apartment at the Marshall apartment building. When A5 returned to his apartment, he messaged RS through Instagram as she had requested. He asked for her phone number. He was surprised that RS responded curtly to his message because he had expected that she would respond by messaging him her phone number.¹⁸

2. A5 statements to the police

The Police Case Report's summary of A5 statements differs from the statements that A5 made to EOAA in the following way. According to the Police Case Report, A5 reported that he entered the bedroom and had sex with RS "after A4." When speaking with EOAA, A5 reported that he had sex with RS after A1 had sex with RS.

3. Witnesses reported the following relevant information related to A5

¹⁸ EOAA asked RS whether the events described by A5 occurred. RS denied the portions of A5 account that are within her scope of knowledge and that differ from her account provided above. For example, RS denies stating that she would have sex with A5 if he used a condom.

- A12 reported the following: When A12 arrived at apartment B, he saw A1 and A4 leaving A2 bedroom. A1 and A4 joined A2, A6, A11, and the recruit on the living room couch. A12 understood that A5 was still in the bedroom with RS. A12 understood that A1, A4 and A5 had just been in the bedroom with RS together. Someone told A12 that they were "training her" and that she had agreed. ("Training her" appears to refer to "running a train," or multiple men lining up to have sex with a woman.)

A12 entered A2 bedroom while A5 was having vaginal sex with RS from on top of her. The lights were turned off. RS saw A12 and then said, "I don't want to" and "this is too many people" and "don't send people in here." RS repeatedly said that she was in pain. A5 did not respond by stopping or changing his activities. A12 reported that it did not look like A5 was doing anything out of the ordinary with RS. A12 did not think that RS was trying to physically push A5 away. A12 ultimately concluded that "it didn't feel right . . . Sometimes it didn't seem like she was into it." A12 left the bedroom after about twenty seconds.

At one point, A2, A6, A11, A4, A1, the recruit, A3 and A12 gathered around the open doorway to A2 bedroom. A5 was having sex with RS inside the bedroom. One of the men was turning on and off the bedroom lights. The men were discussing who would have sex with RS next. The men were also "talking and saying things," although A12 does not remember any specific comments or conversations.

At another point, these men were listening to A5 and RS engage in sexual contact from outside of the bedroom. A12 recalled, "from the stuff she said, it didn't seem like she was into it. She said something and [the men present] decided it was messed up . . . She said something that made it seem like it wasn't the right thing to be doing. They told A2 to get A5 out of the room. A2 said, 'no man, she straight.'" A12 does not recall what RS said that caused this concern. RS later said something else that caused the men concern. She possibly said, "don't send any more people in." A2 then said, "this is the last one."

- A6 reported the following: When A6 left the bedroom, A1, A5 and A4 were in the hallway talking about who would have sex with RS next. At some point, A1 and A5 briefly left apartment B to get some condoms. A5 remained in apartment B at the time that RS left.
- Witness-7 (football team member) reported the following: Witness-7 heard from someone (who he could not recall) that RS had been saying "no" when A5 was alone in the room with her.

A5 : *Analysis and Conclusions*

1. Credibility

RS and A5 accounts of their sexual contact with one another differ markedly. Given the available evidence, it is not possible to reconcile all of the discrepancies. However, we generally find RS account to be more credible for the reasons detailed in the "Credibility of the Parties" section above, and also because A5 account is at times inconsistent with: (1) his own account; or (2) credible reports from other accused students and witnesses. For example:

- A5 reported that he did not have any conversations with A1 and A4 about who would have sex with RS and in what order. A6 reported hearing A1, A5 and A4 talking about who would have sex with RS next.
- A5 reported that no one entered the bedroom while he was having sex with RS, and that RS never expressed that she did not want to have sex with any more people. A12 reported that he entered the bedroom while A5 was having sex with RS, and that RS expressed that she did not want to have sex with any more people.
- According to the Police Case Report, A5 reported that he entered the bedroom and had sex with RS "after A4 A5 told EOAA that he had sex with RS after A1 had sex with RS."
- A5 denied that men ever gathered around the bedroom doorway or turned on and off the bedroom lights. However, A12 reported that he and six other men gathered around the bedroom doorway "saying things" and turning on and off the lights while RS was having sex with A5

2. Sexual assault

a. One-on-one sexual contact

The first issue is whether RS affirmatively consented to oral and vaginal sex with A5 during their one-on-one sexual encounter. According to A5 account, RS provided affirmative consent by: (1) stating that they could not have sex unless he wore a condom and then responding "alright" after he said he would wear one; (2) responding "yes" to A5 request for oral sex; (3) giving A5 oral sex; and (4) turning onto her back after oral sex to indicate a willingness to engage in vaginal sex.

In contrast, according to RS account, A5 forced her to engage in oral and vaginal intercourse. He forced her to perform oral sex by pulling hard on her hair to control her head. RS tried to push A5 off of her during vaginal sex and, in doing so, ripped his condom. However, A5 shoved his penis back into RS vagina with the ripped condom still on and resumed rough sexual intercourse.

A12 reported that he entered A2 bedroom and heard RS repeatedly say that "it hurt" while A5 was having vaginal intercourse with her. A12 further reported that, "it didn't seem like she was into it." A12 also reported hearing RS make other comments indicating that she did not want to be having sexual contact with A5

Moreover, A12 reported that, while A5 was having sex with RS, a group of men discussed who would have sex with RS next. According to two accused students, at some point while A5 was having sex with RS, A2 stated that A5 would be the last person to have sex with RS. Multiple witnesses reported that A5 was in fact the last man to have sex with RS that night. The fact that other men did not have sex with RS after A5 (as they had reportedly been planning) further evidences that RS did or said something while having sex with A5 that led the men to conclude that she did not want sexual contact.

Ultimately, given this witness testimony, as well as our assessment of RS greater credibility, we find it more likely than not that RS did not affirmatively consent to this sexual contact with A5. Moreover, we find that A5 used physical force to have this sexual contact with RS, and continued the sexual contact despite RS verbal and physical opposition.

b. Group sexual contact

The second issue is whether A5 engaged in a group sexual encounter with RS and other men, and, if so, whether RS affirmatively consented to this additional sexual contact. A5 denied that he engaged in any sexual encounter with RS other than the oral and vaginal sex described above. However, the following evidence indicates that A4, A1 and A5 together engaged in a sexual encounter with RS.

First, RS reported in significant detail that A1, A5 and two unknown men had sex with her simultaneously. In particular, she reported that A1, A5 and one unknown man took turns putting their penises in her mouth while the other unknown man had vaginal intercourse with her. She reported that A1 then had sex with her alone, possibly while others were in the room, and that A5 then had sex with her alone.

Second, A12 reported seeing A1 and A4 exit A2 bedroom together, leaving A5 to have sex with RS alone in the bedroom. A12 understood that all three men had just been in the bedroom with RS together. This report is consistent with RS account, in which A5, A1 and others had sex with her simultaneously, then A1 had sex with her while others (such as A4 and A5) were possibly in the bedroom, and then A5 had sex with her alone.

Third, A2 sent a message to the Empire group at 4:17am stating: "Damn A10 all 3 them n****s hitting rn."¹⁹ A2 explained to EOAA that he addressed the message to A10 because A10 had just left the apartment. A2 further explained that the three men in his message referred to A1, A5 and A4 but that he was "amplifying" and that these three men did not actually have sex with RS at the same time. However, we find the more plausible meaning of A2 message to be that A1, A5 and A4 were having sexual contact with RS at the same time.

Finally, many of the accused students' accounts to the police and EOAA about A1, A5 and A4 are particularly contradictory. For example:

¹⁹ "rn" is generally an abbreviation for "right now."

1. Accounts differ about the order in which A5, A1 and A4 had sex with RS. According to the Police Case Report, A2 reported the following order in which these three men had sex alone in the bedroom with RS: A1, A4, A5. In contrast, A2 reported to EOAA that he did not know whether A1 or A4 had sex with RS first. According to the Police Case Report, A5 reported that he had sex with RS "after A4." A5 reported a different order to EOAA: A4, A1, A5.
2. Accounts differ about whether A4 and A1 left the bedroom by themselves or together. A12 reported that A1 and A4 left the bedroom together while A5 remained in the bedroom and had sex with RS. A4 reported that he left the bedroom alone after having sex with RS and did not reenter the bedroom. A1 reported that he left the bedroom twice: first leaving A4 inside the bedroom to have sex with RS and later leaving the bedroom alone after he had sex with RS, at which point A4 was no longer in apartment B.
3. Accounts differ about whether A4, A1 and A5 remained in apartment B after having sex with RS. A1 reported leaving apartment B after having sex with RS and returning only after A5 had finished having sex with RS. However, A2, A12 and A11 each reported seeing A1 in apartment B during the time period when A5 was having sex with RS.

A4 reported that he immediately left apartment B after RS gave him oral sex and that he did not return to apartment B that night. However, A2 and A12 reported that A4 remained in apartment B after having sex with RS. According to the Police Case Report, A1 stated that he saw A4 in apartment B after he and A5 had both finished having sex with RS. However, A1 conversely told EOAA that, after he had sex with RS, he did not see A4 again that night in apartment B.

A5 reported that he left apartment B immediately after having sex with RS.
A6 reported that A5 was still in apartment B when RS left.
4. Accounts differ about whether A1, A5 and A4 ultimately left apartment B together. A1 reported that he left the apartment for the last time that night with A5. A5 reported leaving the apartment alone. A4 also reported leaving the apartment alone. A2 reported that A1, A5 and A4 left the apartment together at the same time as RS. A6 reported that A1 and A5 remained in the apartment when RS left.

Together, these conflicting accounts about the conduct of A1, A5 and A4 suggest that they and other accused students attempted to conceal information about these three men's conduct that night.

Given the totality of this evidence, we find it more likely than not that A1, A5 and A4 had sexual contact with RS at the same time, and that A5 forced RS to give him oral sex during this group sexual contact. RS reported that she did not consent to this sexual encounter in any way. She further reported that the men were forceful and responded to her pleas that she was in

pain and that she wanted to stop by flipping her into a different position, telling her that it would be over soon and/or using more force. Given that significant portions of RS account align with the other evidence described above, and our general assessment of RS credibility as described in the "Credibility of the Parties" section above, we find her account of this sexual encounter to be credible.²⁰

3. Conclusions

In conclusion, we find that A5 violated the following University policies:

1. Administrative Policy: *Sexual Assault, Stalking and Relationship Violence* (sexual assault provision);
2. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 6 (Harm to Person). We find that A5 violated this Subdivision by engaging in assaulting behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A5 violated the sexual assault portion of this Subdivision.
 - o Subdivision 19 (Violation of University Rules). We find that A5 violated the Administrative Policy: *Sexual Assault, Stalking and Relationship Violence*.

²⁰ We considered RS report that four men participated in this sexual encounter. However, we were unable to identify any other participant.

VII.

A1.

Evidence gathered from A12 and others

1. A12 reported the following:

A12 is a first-year member of the University's football team. He lives in apartment number A in the Radius with A7 and two other football team members. On the night of the first football game, A12 was responsible for hosting the recruit. After the game, A12 and the recruit went to a party in apartment 325 in the Radius where some of his teammates live. There were many football players and girls present, [REDACTED].

At some point, A12 told his teammate A2 to "watch the recruit" while A12 retrieved something from his room. When A12 returned to apartment 325, A2 and the recruit were no longer there. A12 believes that he stayed in apartment 325 for a while and then returned to apartment A. (A12 initially reported that he "may have" returned to apartment A, but later reported that he did return to apartment A.) A12 did not see A2 in apartment A that evening. He did not recall [REDACTED] visited apartment A that night. However, after being shown a picture of A2, RS and the recruit on the couch in his apartment, he acknowledged that they must have been present.

At some point, A2 sent a message to the Empire messaging group (which A12 is part of) stating that A2 and the recruit had gone to A2 apartment with a girl. In apartment A, men discussed A2 message and considered going to A2 apartment. However, A12 does not recall which men took part in this discussion. A12 and A3 went to A2 apartment to find the recruit.

When they arrived, A1 and A4 were exiting A2 bedroom. At that time, the door to A2 bedroom was closed. A2, A6, A11, A4, A1 and the recruit sat on couches in the living room. A12 understood that A5 was in the bedroom with a woman (who he later learned was RS). A12 understood that A1, A4 and A5 had just been in the bedroom with RS together. A12 understood that A2 and the recruit had also had sex with RS. Someone told A12 that they were "training her" and that she had agreed. ("Training her" appears to refer to "running a train," or multiple men lining up to have sex with a woman.)

A12 said that he wanted to go into the bedroom next with RS. He and A3 peeked in the bedroom door. The lights were turned off. A5 and RS were having vaginal sex. A5 was on top of RS. A12 had never met RS before. A12 entered the bedroom. RS saw A12 and said, "I don't want to" and "this is too many people" and "don't send people in here." RS repeatedly said that, "it hurt." A5 did not respond to RS statements by stopping or changing his activities. A12 reported that it did not look like A5 was doing anything out of the ordinary with the woman. A12 did not think that the woman was trying to physically push A5 away. A12 does not recall seeing condoms on the floor and plastic dresser.

A12 was in the bedroom for around 20 seconds. A12 denied that he took off his clothes and received oral sex from RS at any point. A12 reported that he did not engage in any sexual activity with RS because "it didn't feel right. [He] just felt like it was not okay. Sometimes it didn't seem like she was into it."

At one point, A2, A6, A11, A4, A1 the recruit, A3 and A12 gathered around the open doorway to A2 bedroom. A5 was having sex with RS inside the bedroom. The men were "talking and saying things," although A12 does not remember exactly what. Someone was turning on and off the lights. The men were "lining up" to determine who would have sex with RS next.

At another point, these men were listening to A5 and RS have sex from outside of the bedroom. A12 recalled, "from the stuff she said, it didn't seem like she was into it. She said something and [the men present] decided it was messed up . . . She said something that made it seem like it wasn't the right thing to be doing. The men told (A2 to get A5 out of the room.

A2 said, 'no man, she straight.'" A12 did not recall what RS said that caused this concern. After RS said something else that caused them concern (possibly her saying don't send any more people in), A2 said, "this is the last one."

A3, A12 and the recruit left the apartment while A5 was still having sex with RS. A12 and the recruit returned to A12 apartment and did not go anywhere else that night.

2. A12 messages to the Empire messaging group

A12 sent messages to the Empire group relating to RS on the night of September 1-2. We do not know exactly when A12 sent these messages. Around 3:17am, A2 wrote to the Empire messaging group about RS; "Me and the recruit finna double team this bitch." A12 then wrote, "Say you swear." A2 then wrote, "A12 this your recruit right." Sometime between 3:17 and 3:25am, A12 then wrote, "Yeah where yall at."

3. Witnesses reported the following relevant information related to A12

- A3 reported the following: A3 entered and left apartment B with A12. A3 does not remember seeing the recruit in apartment B. The recruit did not leave at the same time as A3 and A12.
- A2 reported the following: A2 only spent time with the recruit in apartment A and B. He did not see or spend time with the recruit in apartment 325.
- A2, A3 and other witnesses reported information indicating that the recruit left apartment B shortly after he had sex with RS and did not return to apartment B.
- A7 reported the following: A12 told A7 that he went to apartment B during the early hours of September 2, saw that men were "messaging around with the girl and this doesn't look right," and then left apartment B.

A12 : Analysis and Conclusions

1. Credibility

Given the inconsistencies between A12 reports and other accused students' reports relating to the recruit, we find it likely that A12 provided EOAA with inaccurate information about the recruit's involvement and whereabouts after the first football game. A12 may have provided this inaccurate information because the recruit was A12 responsibility and he feared personal consequences for his lack of supervision of the recruit. However, we found many other portions of A12 account to be credible, particularly given that he reported detailed information as well as information about his own conduct that was against his personal interest because it could support a sexual harassment finding.

2. Sexual assault

RS reported that A12 entered the bedroom and told her to "do the same thing that A4 got," which was oral sex. RS reported that she said "no." RS clearly recalls A12 standing in front of her with his shirt off. However, she does not recall whether she ultimately had any sexual contact with A12. Given RS report that many men had sexual contact with her that she cannot identify and her strong recollection that A12 did not have a shirt on, we believe it is possible that A12 had sexual contact with RS. However, we have insufficient evidence to make a finding on this question.

3. Sexual harassment

A12 reported that he gathered around A2 bedroom door with other accused students while A5 was having sex with RS. A12 also reported that he entered the bedroom while A5 was having sex with RS. We find that this conduct violates the University's sexual harassment policy because it was sexual in nature, unwelcome to RS and had the following impacts on RS: (1) unreasonably interfering with RS academic performance; (2) unreasonably interfering with RS participation in University activities, including her participation [REDACTED] and (3) creating an intimidating, hostile and offensive environment for RS on campus and off-campus in her participation [REDACTED]. We do not detail the specific impacts on RS in order to preserve her privacy.

4. Conclusions

In conclusion, we find that A12 violated the following University policies:

1. Administrative Policy: *Sexual Harassment*; and
2. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 6 (Harm to Person). We find that A12 violated this Subdivision by engaging in harassing behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A12 violated the sexual harassment portion of this Subdivision.

- Subdivision 19 (Violation of University Rules). We find that A12 violated the Administrative Policy: *Sexual Harassment*.

VIII. A7

Evidence gathered from A7 and others

1. A7 reported the following:

A7 is a first-year member of the University's football team. He lives in apartment A in the Radius with A12 and two other football team members. After the first football game, A7 went to a few parties outside of the Radius with his roommates and the recruit that A12 was hosting. After A7 returned to apartment A, a few football teammates visited his apartment. However, A7 does not recall any [REDACTED] visiting his apartment. He also does not recall seeing A2, A5, A1, A4, or A10 in his apartment. A7 went to bed shortly after returning to his apartment. A7 does not recall visiting any apartments in the Radius that night, except his own apartment A.

A7 has never met or seen RS. A7 did not introduce himself to RS in apartment A. A7 did not visit apartment B that night. He first adamantly denied learning that night that the recruit was having or had sex. However, after learning that EOAA had the Empire messages that A2 sent that night stating that the recruit was having sex, A7 acknowledged that he read those messages and was aware that night that A2 and the recruit were with a woman.

A12 later told A7 that he went to apartment B, saw that men were "messaging around with the girl and this doesn't look right," and then left apartment B.

2. Witnesses reported the following information related to A7 :

- Most accused students denied seeing A7 in apartment B after the first football game. However, A12 and A2 both left open the possibility that A7 had been present, although they reported that they did not specifically remember this. Similarly, apartment A resident Witness-6 initially reported that he did not remember A7 leaving apartment A to go to B. However, Witness-6 later appeared to agree that he had seen A12 and A7 return to apartment A together from apartment B.
- Witness-8 and Witness-7 (both football team members) reported that they heard that A7 had been present in apartment B.
- Witness-7 reported the following: Witness-7 saw A7 at gatherings in two Radius apartments on the night of the first football game.

A7 : *Analysis and Conclusions*

1. Sexual assault

RS reported that A7 introduced himself to her in A2 bedroom. However, RS does not recall whether she had any sexual contact with A7. A7 reported that he did not have any sexual contact with RS, and that he was not present in apartment B. Given RS

report that many men had sexual contact with her that she cannot identify, and the evidence that A7 was present in apartment B that night, we believe it is possible that A7 had sexual contact with RS. However, we have insufficient evidence to make a finding on this question.

2. Sexual harassment

A7 reported that he was not present in apartment B on the night after the first football game. In contrast, RS reported that A7 introduced himself to her in A2 bedroom. Even assuming that RS report is accurate, due to the scarcity of information that she can recall about her interaction with A7, there is insufficient evidence to support a sexual harassment finding.

3. Conclusions

In conclusion, we do not have sufficient evidence to conclude that A7 violated any University policies.

IX. A3

Evidence gathered from A3 and others

1. A3 reported the following:

A3 is a first-year member of the University's football team. He lives in apartment 325 in the Radius. A3 initially reported that he engaged in the following activities after the first football game – he got pizza at Toppers with two friends, played Xbox in his apartment by himself and then went to bed. He initially reported to EOAA that he did not visit apartments A or B in the Radius that night. However, after learning that EOAA had credible information that he had been in both apartments A and B that night, A3 acknowledged that he had visited both apartments. A3 reported that there was no party in his own apartment that night.

A3 initially adamantly denied that he learned that night that the recruit had sex with a woman.

A3 initially reported that he did not learn this until a teammate told him the next morning. In contrast, A3 later reported that someone told him that night that the recruit had left with a woman. A3 denied commenting that it was good that the recruit was having sex because that might make him more likely to come to the University.

At one point, A12 told A3 that he was going to A2 room. A12 did not say what was happening in A2 room. A3 accompanied A12 to apartment B. A3 stayed by the front door of the apartment. He talked to A2 and someone else who he cannot remember by the apartment's front door. A3 never entered the apartment. A3 thinks he may have seen A1 inside apartment B.

While A3 was there, the door to A2 bedroom was closed. Someone told A3 that there were people in the bedroom. A3 understood that there was a girl and possibly other people in the bedroom but did not know who or what they were doing. A3 never looked into the bedroom. A3 did not understand that the woman in the bedroom had had sex with football players that night.

A12 told A3 that he wanted to leave apartment B, but did not provide a reason. Then, A3 and A12 left together. A3 either went to his apartment or back to A12 apartment.

2. Witnesses reported the following relevant information related to A3

- A12 reported the following: Shortly after he and A3 arrived at apartment B, A12 saw A1, A4, A2, A6, A11 and the recruit on the living room couch. A12 understood that A5 was still in the bedroom with RS. A12 understood that A1, A4 and A5 had just been in the bedroom with RS together. Someone told A12 that they were "training her" and that she had agreed. ("Training her" appears to refer to "running a train," or multiple men lining up to have sex with a woman.)

A12 reported that he and A3 peeked into the bedroom while A5 was having sex with RS. A12 then entered the bedroom, but A3 did not.

At one point, A2, A6, A11, A4, A1 the recruit, A3 and A12 gathered around the open doorway to A2 bedroom. A5 was having sex with RS inside the bedroom. One of the men was turning on and off the bedroom lights. The men were discussing who would have sex with RS next. The men were also "talking and saying things," although A12 does not remember any specific comments or conversations.

At another point, these men were listening to A5 and RS engage in sexual contact from outside of the bedroom. A12 recalled, "from the stuff she said, it didn't seem like she was into it. She said something and [the men present] decided it was messed up . . . She said something that made it seem like it wasn't the right thing to be doing. They told A2 to get A5 out of the room. A2 said, 'no man, she straight.'" A12 does not recall what RS said that caused this concern. RS later said something else that caused the men concern. She possibly said, "don't send any more people in." A2 then said, "this is the last one." A12 reported that he left apartment B with A3

- Witness-3 reported the following: A3 made a joking comment in apartment A that it is a good thing if the recruit has a "good time" on his visit.
- Witness-6 (football team member and apartment A resident) reported the following: A3 told him in apartment A that the recruit was upstairs with a girl.
- Witness-1 reported the following: Around the time that RS left apartment A, A3 became excited about the recruit having sex with a cheerleader. A3 said it is always great when recruits have sex because then they want to come to the University.
- A1 reported the following: When A1 left apartment B after having sex with RS, he saw A3 in the apartment's hallway near the living room.
- A2 reported the following: A3 came into the apartment's hallway by the front door, and possibly briefly entered the living room.
- A12 and Witness-7 (football team member) both reported that there was a fairly large party in A3 apartment after the first football game.
- A9 reported the following: After the first football game, A9 spent time playing video games with A3 in A3 room in the Radius. A9 left A3 room around 12:30am.

A3 : *Analysis and Conclusions*

1. Credibility

We find portions of A3 account to be not credible for the reasons detailed in the "Credibility of the Parties" section above, and also because A3 account is at times inconsistent with: (1)

his own account; or (2) credible reports from other accused students and witnesses. For example:

- A3 initially reported to EOAA that he did not visit apartments A or B in the Radius on the night after the first football game. A3 later acknowledged that he had visited both apartments that night.
- A3 denied making any comments about the recruit having left with a woman or having sex with a woman. Conversely, three witnesses reported that A3 had made such comments.
- A3 reported that he stayed near the front door and never entered apartment B. However, three other accused students reported that A3 walked down the hallway toward the living room and/or looked into A2 bedroom.
- A3 denied that men ever gathered around the bedroom doorway or turned on and off the bedroom lights. However, A12 reported that he and six other men (including A3 gathered around the bedroom doorway "saying things" and turning on and off the lights while RS was having sex with A5

2. Sexual assault

RS does not recall having any sexual contact with A3 in apartment B. A3 similarly reported that he did not engage in any sexual contact with RS. Given RS report that many men had sexual contact with her that she cannot identify, as well as A3 presence in apartment B that night, we believe it is possible that A3 had sexual contact with RS. However, we have insufficient evidence to make a finding on this question.

3. Sexual harassment

The evidence indicates that A3 crowded around A2 bedroom door with other accused students to watch RS engage in sexual conduct. Several accused students reported seeing A3 inside apartment B in contrast to A3 own report that he never entered the apartment. A12 reported that A3 was among the men watching RS sexual contact with A5 from the bedroom doorway. We understand that A3 denies this conduct. However, based on the numerous inconsistencies in his reports to EOAA, we find his denial to be not credible.

We find that this conduct violated the University's sexual harassment policy because it was sexual in nature, unwelcome to RS and had the following impacts on RS: (1) unreasonably interfering with RS academic performance; (2) unreasonably interfering with RS participation in University activities, including her participation [REDACTED] and (3) creating an intimidating, hostile and offensive environment for RS on campus and off-campus in her participation [REDACTED]. We do not detail the specific impacts on RS in order to preserve her privacy.

4. Conclusions

In conclusion, we find that A3 violated the following University policies:

1. Administrative Policy: *Sexual Harassment*; and
2. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 6 (Harm to Person). We find that A3 violated this Subdivision by engaging in harassing behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A3 violated the sexual harassment portion of this Subdivision.
 - o Subdivision 19 (Violation of University Rules). We find that A3 violated the Administrative Policy: *Sexual Harassment*.

X. A8

Evidence gathered from A8 and others

1. A8 reported the following:

A8 is a first-year member of the University's football team. He lives in apartment B in the Radius with A11, A2 and A6. After the first football game, A8 talked to A2 in their apartment. A8 then went into his bedroom and watched a movie by himself. A8 text messaged his mother at 12:30am and she called him at 1:00am. He went to sleep about 20 minutes later. No one entered A8 bedroom that night. A8 did not leave his bedroom that night. A8 does not remember hearing any voices in his apartment that night. He also does not remember hearing a woman's voice.

A8 is a member of the Empire messaging group. He did not read any of the messages sent that night by Empire group members until the following morning. He did not ever watch any videos taken in A2 bedroom that night. His roommates did not ever talk to him about what had happened that night in A2 bedroom and A8 did not ask.

2. Witnesses reported the following relevant information related to A8 :

- A6 reported the following: A6 saw A8 in the apartment's living room at multiple points while RS was in apartment B. Based on what A2 had been saying, A8 knew that there was a woman in A2 bedroom. A8 asked A2 what was going on and then just "minded his own business." A8 stayed in the living room and did not go near A2 bedroom door. A8 was in the living room when RS left the apartment.
- A11 reported the following: When A11 briefly came out of his room that night, A8 was in his bedroom. However, A11 believes that A8 came out of his bedroom later that night. However, A11 reported that he did not see A8.
- A2 reported the following: A8 was in the living room when A2 came out of his bedroom after having sex with RS. While A1, A5 and A4 had sex with RS, A8 was in the living room with others. At some point that night, A2 thinks that he showed A8 the 90-second video of A2 and the recruit having sex with RS.
- A5, A10, A1 and A4 reported that they did not see A8 in apartment B that night.

A8 : *Analysis and Conclusions*

1. Credibility

RS and A8 provided differing accounts of A8 conduct while RS was in apartment B. However, we generally find RS account to be more credible for the reasons detailed in

the "Credibility of the Parties" section above, and also because A8's account is at times inconsistent with credible reports from other accused students. In particular, A8 reported that he never left his bedroom and was unaware that a woman was in the apartment on the night after the first football game. In contrast, his three roommates reported that A8 did leave his bedroom that night, that A8 asked A2 about what was happening in A2's bedroom and that A8 likely watched the 90-second video of A2 and the recruit having sex with RS that night.

2. Sexual assault

RS does not recall having any sexual contact with A8 in apartment B. A8 similarly reported that he did not engage in any sexual contact with RS. Given RS's report that many men had sexual contact with her that she cannot identify, as well as A8's presence in apartment B that night, we believe it is possible that A8 had sexual contact with RS. However, we have insufficient evidence to make a finding on this question.

3. Sexual harassment

We find it more likely than not that A8 crowded around A2's bedroom door with other accused students to watch RS engage in sexual conduct. Several accused students reported that A8 was present in the common areas of apartment B, in contrast to A8's own report that he was sleeping in his bedroom. RS clearly recalls A8 standing by the bedroom door laughing and cheering while men had sex with her. We understand that A8 denies this conduct. However, based on the available evidence, we find his denial to be not credible.

We find that this conduct violated the University's sexual harassment policy because it was sexual in nature, unwelcome to RS and had the following impacts on RS: (1) unreasonably interfering with RS's academic performance; (2) unreasonably interfering with RS's participation in University activities, including her participation [REDACTED]; and (3) creating an intimidating, hostile and offensive environment for RS on campus and off-campus in her participation [REDACTED]. We do not detail the specific impacts on RS in order to preserve her privacy.

4. Falsification

The Board of Regents Policy: *Student Conduct Code*, Section IV, Subd. 3 provides that students who willfully provide University offices or officials with false, misleading or incomplete information are subject to appropriate disciplinary action. We find that A8 violated this Subdivision by repeatedly and deliberately providing false information to EOAA. In particular, based on the evidence described above, we find that A8 falsely reported that he went to bed at 1:30am on September 2 and did not leave his bedroom again that night.

A8's conduct had the serious negative effect of hindering a University sexual harassment and assault investigation. By falsely reporting that he was not present in the common areas of apartment B during the relevant time period, A8 avoided providing EOAA with critical first-hand information about the events in apartment B that night.

5. Conclusions

In conclusion, we find that A8 violated the following University policies:

1. Administrative Policy: *Sexual Harassment*; and
2. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 3 (Falsification). We find that A8 : willfully provided EOAA with false, misleading and incomplete information.
 - o Subdivision 6 (Harm to Person). We find that A8 : violated this Subdivision by engaging in harassing behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A8 : violated the sexual harassment portion of this Subdivision.
 - o Subdivision 19 (Violation of University Rules). We find that A8 : violated the Administrative Policy: *Sexual Harassment*.

XI. A11

Evidence gathered from A11 and others

1. A11 reported the following:

A11 is a first-year member of the University's football team. He lives in apartment B in the Radius with A6, A8 and A2. After the first football game, A11 went to a party at the Radius. Then he returned to his apartment to watch television and go to sleep. When A11 returned to his apartment, he was the only person there. He went into his bedroom and shut and locked the door.

At some point, A11 started hearing people in the hallway outside of his room. He walked out of his room into the hallway. He saw A12, A1, A6 and A2 standing in the hallway. At that point, the door to A2 bedroom was shut. A11 bedroom is right next to A2 bedroom. No one told A11 that there was a woman in A2 bedroom. A11 never heard a woman's voice in the apartment that night. The other men in the hallway were not talking about a woman or about who would have sex with a woman.

A11 immediately went back into his bedroom and shut and locked the door. At some point while there were still people in the apartment, A6 came into A11 bedroom. A6 did not tell A11 that there was a woman in the apartment or that he had just had sex with this woman. A6 fell asleep on A11 bed. A11 woke him up and A6 left the bedroom while there were still people in the apartment. A11 did not recognize any voices other than the voices of those people that he had seen in the hallway. A11 fell asleep while people were still in the apartment.

A11 is a member of the Empire messaging group. A11 first told EOAA that he did not look at any Empire messages that night or write any messages to the Empire group that night. However, after learning that EOAA had the Empire messages from that night, A11 acknowledged sending messages to the Empire group that night.

The EOAA investigator asked whether A11 learned that night from Empire group messages that A2 and the recruit had sex with a woman. In response, A11 asked whether he had posted his messages to the Empire group before or after A2 messages. After EOAA responded that A11 posted his messages before A2 messages, A11 reported that he had not seen A2 messages that night. A11 reported that he had put the Empire messaging group on a setting where he was not notified when he received a message.

A11 has not had any conversations with his roommates about what happened in A2 bedroom that night. A11 received two videos through the Empire messaging group that night – the first was an 8-second video showing RS and the recruit; the second was a video showing RS, A2 and the recruit having sex. A11 started to watch the second video but then turned it off.

2. Witnesses reported the following relevant information related to A11.:

- A2 reported the following: The walls in their apartment are very thin. A2 heard A11 having sex with a woman through their shared wall while A2 was in the bedroom with RS that night.²¹ A11 was in the living room when A2 came out of his bedroom after having sex with RS. While A1, A5 and A4 had sex with RS, A11 was in the living room with others. At some point that night, A2 thinks that he showed A11 the 90-second video of A2 and the recruit having sex with RS.
- A6 reported the following: After having sex with RS, A6 went into A11 room. A11 came out to the living room later while there were still visitors in the apartment. A11 was in the living room when RS left. A11 knew there was a girl in A2 room based on what A2 had said, but A11 never went near the bedroom.
- A10 reported the following: As he left the apartment, A10 saw A11 for the first time in the hallway.
- A12 reported the following: Shortly after arriving at apartment B, A12 saw A1, A4, A2, A6, A11, and the recruit on the living room couch. A12 understood that A5 was still in the bedroom with RS. A12 understood that A1, A4 and A5 had just been in the bedroom with RS together. Someone told A12 that they were "training her" and that she had agreed. ("Training her" appears to refer to "running a train," or multiple men lining up to have sex with a woman.)

At one point, A2, A6, A11, A4, A1, the recruit, A3 and A12 gathered around the open doorway to A2 bedroom. A5 was having sex with RS inside the bedroom. One of the men was turning on and off the bedroom lights. The men were discussing who would have sex with RS next. The men were also "talking and saying things," although A12 does not remember any specific comments or conversations.

At another point, these same men were listening to A5 and RS engage in sexual contact from outside of the bedroom. A12 recalled, "from the stuff she said, it didn't seem like she was into it. She said something and [the men present] decided it was messed up . . . She said something that made it seem like it wasn't the right thing to be doing. They told A2 to get A5 out of the room. A2 said, 'no man, she straight.'" A12 does not recall what RS said that caused this concern. RS later said something else that caused the men concern. She possibly said, "don't send any more people in," A2 then said, "this is the last one."

- A5, A4 and A1 reported that they did not see A11 in apartment B that night.

3. A11 messages to the Empire messaging group

²¹ We identified and twice contacted the woman who was reportedly with A11 in apartment B that night. However, she did not respond to our request for a meeting.

A11 wrote a number of messages to the Empire messaging group at some point between the end of the first football game and 1:30am. For example, he wrote that he told "hoes" about a party. He wrote about an unknown woman: "if she aint tryna fck imma be pissed." At one point, A11 joking wrote, "run her?" about an unknown woman. A11 reported to EOAA that he was not referring to RS

A11 :: Analysis and Conclusions

1. Credibility

We find portions of A11 account to be not credible for the reasons detailed in the "Credibility of the Parties" section above, and also because A11 account is at times inconsistent with: (1) his own account; or (2) credible reports from other accused students. For example:

- A11 reported that he did not leave his bedroom while RS was present in the apartment, except to briefly step out into the apartment's hallway on one occasion. In contrast, four accused students reported seeing A11 in other places in the apartment during this time period.
- A11 initially reported that he did not look at any Empire messages that night or write any messages to the Empire group that night. However, after learning that EOAA had obtained the Empire messages from that night, A11 acknowledged posting messages that night, including jokingly asking "run her?" about a girl other than RS

2. Sexual assault

RS does not recall having any sexual contact with A11 in apartment B. A11 similarly reported that he did not engage in any sexual contact with RS. Given RS report that many men had sexual contact with her that she cannot identify, as well as A11 presence in apartment B that night, we believe it is possible that A11 had sexual contact with RS. However, we have insufficient evidence to make a finding on this question.

3. Sexual harassment

We find it more likely than not that A11 crowded around A2 bedroom door with other accused students to watch RS engage in sexual conduct. Several accused students reported that A11 was present in the common areas of apartment B during the relevant time period, in contrast to A11 own report that he was not present there. A12 reported that A11 was among the men watching RS sexual contact with A5 from the bedroom doorway. We understand that A11 denies this conduct. However, based on the available evidence, we find his denial to be not credible.

We find that this conduct violated the University's sexual harassment policy because it was sexual in nature, unwelcome to RS and had the following impacts on RS: (1) unreasonably interfering with RS academic performance; (2) unreasonably interfering with RS participation in University activities, including her participation [REDACTED]; and

(3) creating an intimidating, hostile and offensive environment for RS on campus and off-campus in her participation [REDACTED] We do not detail the specific impacts on RS in order to preserve her privacy.

4. Falsification

The Board of Regents Policy: *Student Conduct Code*, Section IV, Subd. 3 provides that students who willfully provide University offices or officials with false, misleading or incomplete information are subject to appropriate disciplinary action. We find that A11 violated this Subdivision by repeatedly and deliberately providing false information to EOAA. In particular, based on the evidence described above, we find that A11 falsely reported that he did not leave his bedroom during the period while RS was present in apartment B, except to briefly step out into the apartment's hallway on one occasion.

A11 conduct had the serious negative effect of hindering a University sexual harassment and assault investigation. By falsely reporting that he was not present in the common areas of apartment B during the relevant time period, A11 avoided providing EOAA with critical first-hand information about the events in apartment B that night.

5. Conclusions

In conclusion, we find that A11 violated the following University policies:

1. Administrative Policy: *Sexual Harassment*; and
2. Board of Regents Policy: *Student Conduct Code*, Section IV:
 - o Subdivision 3 (Falsification). We find that A11 willfully provided EOAA with false, misleading and incomplete information.
 - o Subdivision 6 (Harm to Person). We find that A11 violated this Subdivision by engaging in harassing behavior that endangered RS physical and mental health, safety and welfare.
 - o Subdivision 8 (Sexual Misconduct). We find that A11 violated the sexual harassment portion of this Subdivision.
 - o Subdivision 19 (Violation of University Rules). We find that A11 violated the Administrative Policy: *Sexual Harassment*.

XII. A9

Evidence gathered from A9 and others

1. A9 reported the following:

A9 is a first-year member of the University's football team. He lives in the Marshall apartment building with A4 A5 and another football team member. After the first football game, A9 spent time with his family. He then played video games with A3 in A3 apartment in the Radius. There was no party happening in A3 room while A9 was there. Around 12:30am, A9 left the Radius and returned to his apartment in the Marshall for the night.

A9 did not spend any time in apartments A or B in the Radius that night. A9 did not see [REDACTED] at the Radius that night. A9 roommates A5 and A4 never told A9 what happened in apartment B that night.

2. Witnesses reported the following relevant information related to A9 :

- A4 reported the following: A4 and A9 together went to a hockey player's apartment in the Radius and then to another football player's apartment in the Radius after the first football game.
- Witness-6 (football team member and apartment A resident) and A12 reported the following: A9 spent time in apartment A on the night of the first football game, and then slept over in apartment A
- Witness-5 [REDACTED] and RS friend) reported the following: She spent time talking to A9 around the kitchen island in apartment A on the night of the first football game. A9 was present when a bunch of guys gathered around one of their phones, became excited and repeatedly entered and exited a room while talking about something.
- A3 reported the following: A3 does not think that A9 played video games with him on the night of the first football game. There was no party in A3 apartment that night.
- A12 and Witness-7 (football team member) reported the following: There was a fairly large party in A3 apartment after the first football game.
- No accused student reported seeing A9 in apartment B that night.

A9 : *Analysis and Conclusions*

1. Sexual assault

RS does not specifically recall whether she had any sexual contact with A9 . However, based on her memory of A9 first name and her viewing of his online football photograph,

RS believes he was present in apartment B that night. A9 reported that he did not have any sexual contact with RS, and that he was not present in apartment B. Given RS report that many men had sexual contact with her that she cannot identify, and the strong evidence that A9 provided EOAA with inaccurate information, we believe it is possible that A9 had sexual contact with RS. However, we have insufficient evidence to make a finding on this question.

2. Sexual harassment

Even assuming that A9 was present in apartment B with RS, due to the scarcity of available information about A9 conduct, there is insufficient evidence to support a sexual harassment finding.

3. Falsification

The Board of Regents Policy: *Student Conduct Code*, Section IV, Subd. 3 provides that students who willfully provide University offices or officials with false, misleading or incomplete information are subject to appropriate disciplinary action. We find that A9 violated this Subdivision by repeatedly and deliberately providing false information to EOAA. In particular, based on the evidence described above, we find that A9 falsely reported that he was not present in apartment A in the Radius on the night of the first football game.

A9 conduct had the serious negative effect of hindering a University sexual harassment and assault investigation. By falsely reporting that he was not present in apartment A that night, A9 avoided providing EOAA with critical first-hand information about the events in apartment A that night. This information was particularly important to EOAA's investigation given that RS and many of the accused students were present in apartment A before and/or after visiting apartment B.

4. Conclusions

In conclusion, we find that A9 violated the Board of Regents Policy: *Student Conduct Code*, Section IV, Subdivision 3 (Falsification) by willfully providing EOAA with false, misleading and incomplete information.

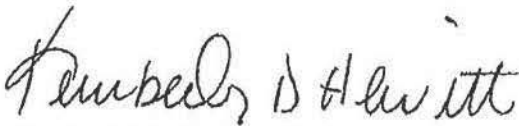
XIII. SUMMARY OF FINDINGS

	Administrative Policy: <i>Sexual Harassment</i>	Sexual assault provision of the Administrative Policy: <i>Sexual Assault, Stalking and Relationship Violence</i>	Board of Regents Policy: <i>Student Conduct Code, Section IV</i>
A2	Violation	No Violation	Violation of Subdivisions 6, 8 and 19
A6	Violation	Violation	Violation of Subdivisions 6, 8 and 19
A10	No Violation	No Violation	No Violation
A4	Violation	Violation	Violation of Subdivisions 6, 8 and 19
A1	Violation	Violation	Violation of Subdivisions 6, 8 and 19
A5	No Violation	Violation	Violation of Subdivisions 6, 8 and 19
A12	Violation	No Violation	Violation of Subdivisions 6, 8 and 19
A7	No Violation	No Violation	No Violation
A3	Violation	No Violation	Violation of Subdivisions 6, 8 and 19
A8	Violation	No Violation	Violation of Subdivisions 3, 6, 8 and 19
A11	Violation	No Violation	Violation of Subdivisions 3, 6, 8 and 19
A9	No Violation	No Violation	Violation of Subdivision 3

CONCLUSION

This concludes our investigation. As you know, retaliation against any individual for participating in EOAA's investigative process is prohibited. Retaliatory conduct includes any form of intimidation, reprisal or harassment against individuals for reporting or otherwise participating in a University investigation of sexual misconduct. Sharing information about this investigation with individuals who do not need to know may in some circumstances constitute retaliation. If you have any questions or concerns about this letter or any other EOAA issue, please let us know.

Sincerely,



Kimberly D. Hewitt, Director
Office of Equal Opportunity and Affirmative Action



Tina Marisam, Assistant Director
Office of Equal Opportunity and Affirmative Action