

**MEMORANDUM**

**TO:** Vincent Carilli  
Vice Chancellor for Student Life

**FROM:** Timothy R. Burkhalter *TRB*  
Director of Student Conduct & Community Standards

**DATE:** October 8, 2014

**SUBJECT:** APA Hearing Referral  
[REDACTED]  
Student Identification Number: [REDACTED]

I am forwarding to you all relevant materials in the Office of Student Conduct & Community Standards case of student [REDACTED] for immediate referral to a Tennessee Uniform Administrative Procedures Act (APA) Hearing. Attorney Lee Davis serves as Mr. [REDACTED] counsel on the matter.

Contact information for all parties is as follows:

Lee Davis Attorney	508 E. 5 <sup>th</sup> Street Chattanooga, TN 37403 423.266.0605 lee@davis-hoss.com
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[REDACTED] Accused Student (Respondent)	[REDACTED] [REDACTED]@utk.edu
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[REDACTED] Victim Contact (Complainant)	[REDACTED] [REDACTED]@vols.utk.edu
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**Account of Alleged Misconduct**

On the night of the [REDACTED] (September 2014) [REDACTED] went off-campus to a [REDACTED] party that night. Ms. [REDACTED] stated she "got drunk" and referenced it was the drunkest or most intoxicated she had ever been. While at the party, Ms. [REDACTED] saw a guy [REDACTED] she knew via a mutual friend from high school. She got to [REDACTED] and "remembers having sex" with Mr. [REDACTED]. Ms. [REDACTED] recalls she "told him to stop, he did". Ms. [REDACTED] does not remember anything before or leading up to that. Ms. [REDACTED] remembers Mr. [REDACTED] asked "are you straight?" at some point but she could not comprehend. Ms. [REDACTED] remembers leaving Mr. [REDACTED] room to see some of his friends afterwards. She has "no idea" if Mr. [REDACTED] friends were involved or not. Ms. [REDACTED] later returned with Mr. [REDACTED] back to his room then went to sleep. The next day a friend of Ms. [REDACTED] picked her up. Ms. [REDACTED] stated Mr. [REDACTED] was "passed out, asleep when she left".

At some point after the incident Ms. [REDACTED] noticed she "had a bruise on her left shoulder", that vaginally she was sore ("trouble walking"), and mentioned she saw a "condom wrapper on the floor". Ms. [REDACTED] also stated her "top had been ripped" and a "button was off her shorts". Ms. [REDACTED] stated she doesn't know or remember much else.

#### **Applicable Standard of Conduct**

- (7) Sexual assault or misconduct. "Sexual assault" is defined as any sexual act or attempt to engage in any sexual act with another person without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. "Sexual misconduct" is defined as any intimate touching of another person, or forcing a person to engage in intimate touching of another, without the consent of the other person, or in circumstances in which the person is unable to give consent due to age, disability, or an alcohol/chemical or other impairment. It is the responsibility of the person initiating sexual activity to ensure the other person is capable of consenting to that activity. Consent is given by an affirmative verbal response or acts that are unmistakable in their meaning. Consent to one form of sexual activity does not mean consent is given to another type of sexual activity.

#### **Penalty Recommendation**

Mr. [REDACTED] denies the standard of conduct for which he is being charged. If the Administrative Law Judge finds Mr. [REDACTED] responsible for the violation, the University recommends a penalty of indefinite disciplinary suspension, effective the fall 2014 semester on September [REDACTED] 2014.

#### **Adjudication Timeline**

Mr. [REDACTED] met with the Office on September 18, 2014, and also on September 22, 2014, to provide his statement in regards to the incident. After determination was made on October 1, 2014, to charge Mr. [REDACTED] of a violation of a Standard of Conduct, Mr. [REDACTED] was sent an Administrative Hearing letter, Fundamental Rights of the Accused document, Notice of Charges, Student Disciplinary Hearing and A.P.A. Hearing forms. On October 3, 2014, Mr. [REDACTED] submitted the request for an A.P.A. Hearing. Mr. [REDACTED] also inadvertently submitted the Waiver Form for A.P.A. Hearing, then provided a clarifying email of his desire to opt for an A.P.A. Hearing.

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