United World College Costa Rica

Sexual assault/misconduct procedure

Note: This policy is an adaptation of College of the Atlantic’s sexual assault/misconduct policy. All credits go to COA.
Please refer to the Child Protection Policy with regard to issues that involve students and staff.

Background

1. The school’s stance

UWCCR takes allegations of sexual assault/misconduct very seriously. Members of the UWCCR community, guests, volunteers and visitors have the right to be free from sexual misconduct and violence and the obligation to follow and respect this and the Child Protection policy. This document is intended to define community expectations, to establish definitions to aid in determining when behavior violates these expectations, and to outline the options available in response to sexual misconduct. It is our expectation that each individual will exhibit the respect, consideration, and responsibility that would prohibit sexual misconduct. Furthermore, is important to remember that any inappropriate intimacy including having sex on campus is not allowed, while we expect everyone’s respect to this norm, we also expect that if individuals decided not to respected and are engaging in any kind of sexual activity will communicate clearly with each other, it is the responsibility of the person(s) pursuing sexual activity to ensure that she/he/they have the consent of any partner(s). An instance of sexual misconduct is a violation of the rights of the individual as well as a significant betrayal of the fundamental trust and values of our community. UWCCR believes that rape, unwanted sexual contact, intimate partner violence, sex- or gender-based stalking, sexual harassment, sexual exploitation, the perpetuation of rape culture (rape jokes, explicit sex jokes, gender based jokes) are unacceptable and therefore sexual misconduct will not be tolerated.
The school will regard all reports of sexual misconduct as worthy of earnest response. It is our goal to provide prompt, effective, and sensitive assistance to anyone requesting support as a result of sexual misconduct. This includes taking action to protect community members from harm, to impose serious disciplinary consequences to ensure misconduct is not repeated, and to educate our community appropriately. The school will strive to empower people who have experienced sexual misconduct regarding decisions about notification, medical or other services, legal or campus action, and other matters. This applies to misconduct from peer to peer, from staff member to students and from students to staff member. For further details, on staff - student misconduct, please see the Child Protection policy.

Included in this procedure are:

**Language**

UWCCR recognizes that there is much discussion about appropriate terminology—victim or survivor. While we recognize how delicate is the construction syntax-wise, we have chosen to use “victim/survivor” in this document when describing resources available to those who report misconduct, in recognition that each person should have the right to determine the language that best describes where they are in the process of coming to terms with what they have experienced. Where we are outlining our policy and procedure for addressing complaints, we use the term complainant for the person who has reported experiencing misconduct and respondent for the person(s) named in the complaint.

**Scope**

This procedure covers incidents or behavior that occur on campus, off-campus, on UWCCR-sponsored trips or programs in which one or more of the parties are members of the UWCCR community.

**Definitions**

For the purposes of this procedure the following definitions are used, please be aware that infractions related with any of the definitions explained here will be consider as Sexual Harassment or Assault, therefore it will follow the procedure for expulsion described in our School Code of Conduct.
Consent

Consent is unambiguous, voluntary, and knowing agreement demonstrated by positive and active participation and cooperation between partners prior to and during a sexual encounter for any kind of sexual activity. Consent can only be given by a person with the capacity to do so and who has not been forced into doing so.

The following are offered to further understanding of the definition of consent:

➔ Consent can be given by word or action, but verbal consent is usually the clearest.
➔ Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity or the same activity again.
➔ Silence—without actions clearly demonstrating permission—cannot be assumed to show consent.
➔ Previous sexual encounters with or prior consent from the same partner(s) cannot be assumed to imply consent to future sexual acts.
➔ Consent given prior to or during an encounter does not preclude consent being withdrawn later in that same encounter.
➔ Consent needs to be obtained each time partners engage in sexual activity.
➔ Under this procedure, “No” always means “No,” and “Yes,” if produced while a person is being coerced or does not have the capacity to consent, may not always mean “Yes.”

Sexual Misconduct

Sexual misconduct offenses include but are not limited to the following each to be defined further: Sexual Harassment, Sexual Exploitation, Sex- or Gender-Based Stalking, Intimate Partner Violence (Dating Violence and Domestic Violence), Sexual Assault—Unwanted Sexual Contact, Sexual Assault—Rape (or the attempt to commit such actions).

Sexual Harassment

➔ is unwelcome gender-based verbal or physical conduct
➔ it is severe, persistent or pervasive
➔ it unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the school’s educational program, work environment, and/or activities
➔ and is based on the creation of a hostile environment, retaliation or quid pro quo
Sexual Assault—Unwanted Sexual Contact

Sexual assault—unwanted sexual contact, is any intentional sexual touching, however slight, with any body part or foreign object, by a person upon another person regardless of gender, that is without consent and/or by force.

Sexual contact includes:

$\rightarrow$ Intentional contact with the breasts, buttocks, groin, or genitals.
$\rightarrow$ Touching another with any of these body parts.
$\rightarrow$ Making another touch you or themselves with or on any of these body parts.
$\rightarrow$ Any intentional bodily contact in a sexual manner that doesn’t involve contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

Sexual Assault—Rape

Sexual assault—rape is any sexual intercourse however slight, with any body part or foreign object, by a person upon another person regardless of gender, that is without consent and/or by force.

Intercourse includes vaginal sex, anal sex, and oral sex, no matter how slight the penetration or contact.

Incapacity

Incapacity is the lack of ability to consent resulting from mental disability, sleep, lack of consciousness, involuntary physical restraint, alcohol intoxication, or from the consumption of drugs including but not limited to rohypnol, ketamine, GHB, burundanga, etc

NOTE: Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to consent if they lack the capacity to reasonably understand the situation. Understanding is demonstrated by knowledge of who, what, when, where, why, or how. In situations where alcohol or drug use are involved, if one person is incapable of functioning and
the other, capable of functioning, takes advantage or exploits the first person’s incapacitation—there is no consent.

Administering drugs to another person for the purpose of reducing inhibitions, gaining or rendering a person incapable of giving consent is a violation of this.

**Force**

Force is the use of physical violence and/or the imposition on someone physically to gain sexual access and can also include threats, intimidation (implied threats) and coercion that overcome resistance or produce consent. The absence of resistance does not imply the absence of force.

NOTE: The use of physical force including partner (domestic or dating) violence, constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restraint, battery, etc.) would face consequences not just for sexual misconduct, but also additional consequences for assultive behavior, as it is describe in our school Code of conduct. Similarly, emotional abuse used to control, isolate, or manipulate another person constitutes misconduct for which additional consequences can be imposed.

**Coercion**

Coercion is when one person is pressured unreasonably, manipulated, and/or peer pressured into sexual acts and is clearly distinct from seduction. Coercing someone into sexual activity violates that person’s agency and autonomy and this policy in the same way as physically forcing someone into sex.

**Retaliation**

Retaliation is any adverse action--threats, blackmail, violence, directed against a person as a result of that person making a complaint, participating in an investigation, or being part of the resolution of a complaint of discrimination or sexual misconduct. Behaviors deemed retaliatory could be the basis for a separate complaint under the code of conduct.
Consequences of Violating the Sexual Misconduct Policy

The misconduct hearing process is detailed on our school code of conduct. However, it is relevant to include here that the school never assumes a community member is in violation of UWCCR policy without due process. Hearings are conducted to take into account all evidence available, from all relevant sources.

In addressing sexual assault and other forms of sexual misconduct, not just those acts that would meet a criminal standard (please see section 8). UWCCR aims to uphold our community expectations of respect, the right to autonomy, and a campus environment that is safe for all.

Not all forms of misconduct covered in this policy will be deemed to be equally serious offenses, and UWCCR reserves the right to impose different consequences, depending on the severity of the offense and depending on the situation. That said, the following are offered as guidelines for hearing boards when addressing complaints of sexual misconduct:

➔ Any student found responsible for violating the policy on sexual harassment or sexual exploitation, or sex- or gender-based stalking will likely receive a recommended consequence ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.

➔ Any student found responsible for violating the policy on Intimate Partner Violence (Domestic Violence and Dating Violence) or Sexual Assault—Unwanted Sexual Contact (where no intercourse has occurred) will likely receive a consequence ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.

➔ Any student found responsible for violating the policy on Sexual Assault—Rape will likely face a recommended consequence of expulsion.

➔ Those responsible for determining consequences for a person(s) found responsible for a policy violation may ask the complainant for an impact statement to aid in their determinations and may also request the support of external experts.
The person reviewing a request for appeal should follow the range of recommended consequences unless compelling justification exists to do otherwise.

UWCCR will consider the concerns and rights of both the person bringing a complaint of sexual misconduct and the person accused of sexual misconduct when addressing sexual misconduct complaints. The procedure for addressing complaints is designed to provide fundamental fairness to all parties.

Response

UWCCR will work with anyone who has experienced sexual misconduct to make accommodations and offer appropriate services. UWCCR reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect community members’ rights and safety. Options available to victims/survivors may include but are not limited to changes to residences, changes to course or work schedules, or extra-curricular activities, access to medical and counseling services including transportation, limited or no contact agreements with persons involved, and campus disciplinary procedures, as well as assistance in accessing legal options including reporting misconduct to the police (please see section 8). UWCCR may also choose to institute interim suspension from campus pending a hearing when appropriate.

It is important to mentioned that according to Costa Rican law, if the student is less that 18-year-old, it will not be up to him or to her to decide whether to report the situation to the Costa Rican Judicial Authorities or not, it depends on the case and situation.

Amnesty

Any person, who in the course of seeking support for being sexually assaulted, admits to a violation of UWCCR policy will be granted amnesty and will not face disciplinary action or consequences for that policy violation (ex. underage drinking, having sex on campus, etc).
Options for Support and Pursuing Action

When seeking support or reporting sexual misconduct, all parties should be aware of confidentiality, privacy and reporting requirements in order to make informed choices. Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at UWCCR and upon UWCCR policy. Individuals are encouraged to ask questions about a person’s ability to maintain confidentially or to maintain privacy, before consulting and are reminded that they do not have to share any information that they do not wish to share when seeking support, parents will have to be informed of the situation depending on the context.

To seek confidential support

Individuals wishing to maintain absolute confidentiality can seek support from UWCCR mental health counselors and nurses, from other mental health practitioners, or from our community partners working with victims/survivors of sexual assault. Campus counselors are available to help you free of charge. These people can offer you confidentiality, discuss options and offer advice without any obligation to tell anyone unless you want them to do so, the rule of breaking confidentiality applies or with the exceptions of minors, as parents have to be informed.

To take action and make a formal complaint (non-confidential)

In order to begin a disciplinary process, leading to possible administrative action and/or an investigation and a resolution that can end in the consequences described in the Code of Conduct individuals are encouraged to make a formal complaint to the Residential Life Director or Deputy Head or any other adult on campus. Formal reporting means that only people who need to know will be told, and information about the complainant will be shared only as necessary with investigators, witnesses, and the accused individual.

Education and Training

UWCCR recognizes the importance of raising awareness of the issues surrounding sexual misconduct and assault. Therefore, we commit ourselves to ensuring that community members (students, faculty and staff) have adequate information on this topic and are offered appropriate
training on consent, sexual misconduct, Child Protection and our policies and procedures on a regular basis. We further commit to ensuring that those responsible for responding to those who have experienced sexual misconduct or those responsible for addressing sexual misconduct complaints have been sufficiently trained to carry out those responsibilities with sensitivity, compassion, and fairness.

**General notes:**

Both the complainant and the respondent can have an advisor of their choosing to assist them with the process. This advisor may be, but is not required to be a member of the UWCCR community. The role of the advisor is to provide support and guidance to either the complainant or the respondent, but not to direct the process or formally represent the complainant or respondent.

Both the complainant and the respondent have access to available counseling and other relevant support services, assuming that the individual is a member of the UWCCR community.

Requests for such support or information about services can be requested from the Residential Life Director or Deputy Head.
Procedure.

1. Notice

Notice can come in a variety of ways including a formal complaint. Notice of a formal complaint can be made in a written statement or be given orally to a school employee. All employees who receive such a complaint must immediately inform the Residential Life Director or Deputy Head. Complaints should clearly and concisely describe the events of the incident(s) in question in narrative format, including when and where it happened, and if there any witnesses. The complaint should also reference any supporting documentation that the complainant may have available to them.

2. Initial remedies or interim actions

There are a number of interim actions that are outlined in our Sexual Assault and Misconduct Policy that are available. These will be discussed with the complainant to determine which, if any, may be appropriate given the specific nature of the complaint. Complaints may be dealt with through the Residential Life policy or the College’s Code of Conduct depending on the severity of the complaint.

3. Preliminary intake

Upon receipt of a complaint the Deputy Head and Residential Life Director in conjunction with the disciplinary committee members will gather information and take whatever action is necessary to determine if there is reasonable cause to believe that any policies may have been violated and whether or not UWCCR has jurisdiction to proceed with our campus process. For very serious infractions that could result in an expulsion, please refer to the procedure from the Code of Conduct.

4. Notice of investigation

At the appropriate point, the Deputy Head or designate will prepare a letter of notice of investigation for the respondent, including the list of charges based on the initial investigation and instructions on how and when the respondent will be interviewed. This notice has to be given in the lapse of time define in the Code of conduct for the expulsion procedure.
5. Investigation

For infractions that could lead to an expulsion, Deputy Head or designate and the disciplinary committee will ensure a thorough, reliable, impartial investigation by developing a strategic investigation plan including a witness list, evidence list, intended timeframe, and an order of interviews, depending on the case and the information available. The committee will also prepare an investigation report to include a finding based on a preponderance of the evidence and may contact an external expert to support or conduct the investigation.

6. Notice of charge

If the investigation determines there is sufficient evidence to proceed, then a formal letter of conclusions will be prepared and given to the respondent outlining all what was determined to be relevant as a result of the investigation.

7. Presentation of finding

The findings of the investigation will be presented to the respondent, who can accept the findings, accept in part, reject in part or reject all findings. If the respondent is found not responsible, then the investigation is closed. If the respondent accepts the finding, then the Deputy Head will determine and implement an appropriate sanction according to the Code of Conduct. If the respondent rejects the findings in part or in full then an appeal process has to follow as described in the Code of Conduct.

8. Costa Rican Law

The following acts can be considered as criminal and the complainant will have the option of the case be referred to local authorities. In many cases, the school has an obligation to report these reports to the local authorities. The school will not be involved in the decisions that are reached independently by law enforcement authorities (Please refer to the Costa Rican Criminal Code for specific details):

a) Rape:
   1. Consists of accessing (penetration) orally, anally or vaginally, in the following cases:
   2. When the victim is under thirteen - even with consent,
   3. When you take advantage of the victim’s vulnerability or it is found unable to resist.
   4. When body violence or intimidation is used.
b) Sexual relations with minors (under 18): Consists of accessing (penetration) orally, anally or vaginally, with a minor, provided that it does not constitute a crime of rape, in the following cases:

1. When the victim is over thirteen and under fifteen years of age, and the author is five or more years of age.
2. When the victim is older than fifteen and under eighteen, and the author is seven or more years of age.
3. If the author has, as regards the victim, the status of governing, uncle, aunt, brother or sister, cousin or cousin by consanguinity or affinity, whether guardian, or is in a position of trust or authority regarding the victim or his family, whether or not they are related to each other.

c. Paid sexual acts with minors: Anyone who pays, promises to pay or give in return an economic or other advantage to a minor or a third party, so that the minor can perform sexual or erotic acts.

d. Sexual abuse against minors: in this case the offender abusively performs acts for sexual purposes against a minor or obliges them to perform them to the agent, himself or another person, provided that it does not constitute a crime of violation.

e. Sexual abuse against persons of legal age: In this case the offender abusively performs acts for sexual purposes against a person of legal age, or obliges them to perform them to the agent, himself or another person, provided that it does not constitute a crime of rape.