



- ▼  I. Middlebury-Wide Policies
  - A. General Principles
  - ▼  B. Non-Discrimination Policies
    - B.1.a. Non-Discrimination Policy
    - B.1.b. Non-Discrimination Investigations & Resolutions Procedure
    - B.1.b (1). Title IX Investigation & Resolutions Policy
    - B.1.c. Americans with Disabilities Act Policy
    - B.1.d. Service and Assistance Animals Policy
  - C. Health & Safety Policies
  - D. Appropriate Use of Middlebury Resources and Assets
  - E. Records
  - F. Required Disclosures
  - G. Misconduct in Research and Other Scholarly Activities
  - H. Information Technology
- II. Policies for the Undergraduate College
- III. Policies for the Language Schools
- IV. Policies for the Institute of International Studies
- V. Policies for Schools Abroad

- › □ VI. Policies for Middlebury
    - Institute Online
    - Previous Handbooks
- 

## B.1.a. Non-Discrimination Policy

Middlebury is committed to creating and maintaining a diverse, equitable and inclusive campus environment where we value openness, curiosity, rigor, and equality. Discrimination, including harassment, is antithetical to our values and mission, and, therefore, Middlebury seeks to eradicate unlawful discrimination based on protected personal characteristics in its educational and employment environments.

Individuals who feel they have experienced discrimination, including harassment, based on a protected personal characteristic are strongly encouraged to report the behavior to our [Civil Rights and Title IX office](#) (“CRTIX”). Middlebury provides timely services to those who have been affected by discrimination, including harassment. It is not necessary to file a complaint with Middlebury or participate in an adjudication process in order to request “supportive measures” from Middlebury. Appropriate supportive measures may vary depending on specific facts and circumstances and will be determined on a case-by-case basis. Moreover, Middlebury provides procedures to assure prompt and equitable investigation and resolution intended to stop discrimination/harassment, remedy harms and prevent repetition.

Violations of this Policy may result in sanctions up to and including termination, dismissal, or expulsion, as determined by the appropriate Middlebury officials. Concerns about conduct under this Policy may be resolved through informal or “adaptable” resolutions, when appropriate. Retaliation against an individual because they have made an allegation of discrimination, or cooperated in an investigation of such a complaint, as further defined below, is prohibited. Submitting a complaint that is not in good faith or providing false or misleading information in any investigation of complaints is also prohibited. Nothing in this Policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or impair Middlebury’s educational mission.

### **Scope:**

This Policy applies to all Middlebury students, staff, faculty, applicants and visitors to Middlebury’s programs and campus. “Middlebury” includes the undergraduate college, the Language Schools, the School of the Environment, Bread Loaf School of English, Bread Loaf Writers’ Conference, the Schools Abroad, and the Middlebury Institute of International Studies at Monterey.

See also the Addendum applicable to California employees only, available at [Appendix A: Addendum Applicable to California Employees](#).

### **Types of Behavior Prohibited by Law and this Policy:**

This Policy prohibits the following:

- (i) Sex-Based Harassment as defined by Title IX, including but not limited to sexual assault, domestic and dating violence, sex-based stalking, hostile environment sexual harassment, and *quid pro quo* sexual harassment;
- (ii) Discriminatory harassment, whether caused by an identifiable person or not, based on or motivated by an individual's actual or perceived protected personal characteristics, or, if not attributable to one or more identifiable Respondents, that has the purpose or effect, from the point of view of a reasonable person, of objectively and significantly undermining and detracting from or interfering with an individual's educational or work performance or access to Middlebury resources on the basis of their protected personal characteristics;
- (iii) Discrimination in employment, or in admission or access to Middlebury's educational or extracurricular programs, activities, benefits or facilities based on an individual's protected personal characteristics; and
- (iv) The adoption or implementation of any policy, practice, or procedure that has a disparate impact that objectively and significantly undermines and detracts from an individual's access to Middlebury resources or equal participation in Middlebury's programs, on the basis of an individual's protected personal characteristics.

### **Investigation and Resolution Procedures**

Alleged violations of this policy are investigated and adjudicated using the following procedures:

#### **(A) Title IX Investigations & Resolutions Procedure**

In accordance with Federal law and the Title IX regulations issued in April 2024, all Title IX Sex-based discrimination and harassment prohibited by this Policy is investigated and adjudicated using Middlebury's [Title IX Investigation & Resolutions Procedure](#), which applies to:

- (i) Sexual assault, domestic violence, dating violence, or stalking on the basis of sex;
- (ii) *Quid pro quo* sexual harassment (as defined below);
- (iii) Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate

in or benefit from Middlebury's education or employment program or activity (*i.e.*, creates a hostile environment);

(iv) Discrimination in employment, or in admission or access to Middlebury's educational or extracurricular programs, activities, benefits or facilities based on an individual's sex; and

(v) The adoption or implementation of any policy, practice, or procedure that has a disparate impact that objectively and significantly undermines and detracts from an individual's access to Middlebury resources or equal participation in Middlebury's programs, on the basis of an individual's sex.

## **(B) Non-Discrimination Investigations & Resolutions Procedure**

All other conduct prohibited by this Policy that is not required to be addressed through Middlebury's Title IX Investigations & Resolutions Procedure is investigated and adjudicated using Middlebury's [Non-Discrimination Investigations & Resolutions Procedure](#).

### **Amnesty**

Middlebury encourages the reporting of all concerns regarding harassment and discrimination. Sometimes individuals are hesitant to report such instances because they fear they may be charged with other policy violations, such as underage alcohol or drug consumption. While not condoning infractions of any kind, to encourage reporting, Middlebury may, where appropriate, offer leniency with respect to alleged ancillary policy violations that may be revealed as a result of a report or that are related to the prohibited conduct incident(s) at issue, particularly those involving underage drinking or drug use. The nature and scope of the leniency will depend on the particular circumstances involved, and Middlebury may take disciplinary action if it determines that the conduct giving rise to the alleged ancillary policy violation placed or threatened to place the health or safety of another person at risk. Individuals should understand that the use of alcohol or drugs never makes them at fault for instances of harassment or discrimination committed against them, nor does it mitigate accountability for committing such violations against another. This Policy will not be construed to limit counter-complaints made in good faith or to prohibit action as to a report made in good faith.

### **Confidentiality and Privacy**

Middlebury will treat information it receives with appropriate sensitivity and care and will endeavor to protect the privacy of the individuals to the extent it can do so, consistent with its obligations to respond to reports of alleged Non-Discrimination Policy violations. CRTIX will only disclose information regarding a concern that has been reported to it on a need-to-know basis or as required by law. Further details regarding reasonable steps Middlebury will take to protect the privacy of the Parties and witnesses during the pendency of a process conducted under this Policy are outlined in the applicable procedures.

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### **Glossary of Terms**

**1. Protected personal characteristics** means actual or perceived sex, race, creed, color, place of birth, ancestry, ethnicity, national origin, religion, sexual orientation, sex characteristics, gender identity or expression, age, marital status, pregnancy, service in the armed forces of the United States, positive HIV-related blood test results, genetic information, or disability and/or any other status or characteristic as defined and to the extent protected by applicable law in particular states in which Middlebury operates educational programs (e.g. crime victim status in Vermont).

**2. Based on “sex”** includes sexual harassment. Some common examples include: touching or grabbing a sexual part of a person’s body; touching or grabbing any part of a person’s body after that person has indicated, or it is known or reasonably should be known, that such physical contact was unwelcome; continuing to ask a person to socialize when that person has indicated they’re not interested; displaying or transmitting sexually suggestive pictures, objects, cartoons, or posters if it is known or reasonably should be known that the behavior is unwelcome; continuing to write sexually suggestive notes or letters if it is known or reasonably should be known that the person does not welcome such behavior; referring to or calling a person a sexualized name if it is known or reasonably should be known that the person does not welcome such behavior; regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or reasonably should be known that the person does not welcome such behavior; derogatory or provoking remarks about or relating to a person’s sex or sexual orientation; harassing acts or behavior directed against a person on the basis of their sex or sexual orientation.

**3. Domestic violence** means conduct that constitutes a crime of violence in the relevant jurisdiction (either felony or misdemeanor) committed:

1. By a current or former spouse or intimate partner of the Reporting Individual;
2. By a person with whom the Reporting Individual shares a child in common;
3. By a person who is cohabitating with, or has cohabitated with, the Reporting Individual as a spouse or intimate partner;
4. By a person similarly situated to a spouse of the Reporting Individual under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
5. By any other person against an adult or youth Reporting Individual who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

For the purposes of this definition, domestic violence includes but is not limited to sexual or physical abuse or the threat of such abuse, if involving individuals who are or have been in a domestic relationship as defined above, and violence means conduct that involves the use or threatened use of physical force against a person, or creates a reasonable belief that physical force may be used against a person in the course of the conduct.

**4. Dating violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Reporting Individual.

For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse, if involving individuals who are or have been dating as defined here, and violence means conduct that involves the use or threatened use of physical force against a person, or creates a reasonable belief that physical force may be used against a person in the course of the conduct. The existence of such a relationship shall be determined, as an initial matter, based on the Reporting Individual's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**5. Discrimination in employment, admission or access to Middlebury's education or extracurricular activities** means taking an adverse action in educational programs or employment against a person based on or motivated by that individual's protected personal characteristics or effectively denying a person admission or access to Middlebury's educational programs or activities based on that individual's protected personal characteristics.

**6. Discriminatory harassment**, with one exception,<sup>[1]</sup> means unwelcome conduct on the basis of a protected personal characteristic or characteristics that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Middlebury's education or employment program or activity (*i.e.*, creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the Reporting Individual's ability to access Middlebury's education program or activity;
- The type, frequency, and duration of the conduct;
- The Parties' ages, roles within Middlebury's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other protected personal characteristic-based harassment in Middlebury's education program or activity.

Generally, harassment may include repeated slurs, or taunts in the guise of jokes, or disparaging references to others, use of epithets, stereotypes, comments, gestures, threats, graffiti, display or circulation of written or visual materials, taunts on manner of speech, and negative reference to customs when such conduct is based on or motivated by one or more of the protected characteristics identified above, or other characteristics as defined and protected by applicable law. In Middlebury's Vermont programs, harassment may also include conduct of the type described above that is based on or motivated by a student's family member's actual or perceived protected personal characteristics, which has the type of purpose or effect described above. With respect to Middlebury programs operating in states other than Vermont (e.g., California and Washington, D.C.), harassment shall be defined as stated in this section unless the local law applicable to the program at issue mandates a broader definition, in which case such law will apply.

Specifically in the context of Reporting Individuals who are Middlebury employees working in a Middlebury education program or activity in Vermont, harassment also includes conduct described in the Vermont law definition stated in footnote 1.

**7. Quid Pro Quo Sexual Harassment** means unwelcome sexual advances, requests for sexual favors, and other verbal, written, visual or physical conduct of a sexual nature when:

1. submission to that conduct is made either explicitly or implicitly a term or condition of employment or educational status;
2. submission to or rejection of such conduct is used as a component of or as the basis for employment decisions (such as wages, evaluation, advancement, assigned duties, or shifts) or educational/student life-related decisions (such as grades, class assignments, or letters of recommendation, or residence-related decisions) affecting an individual; or
3. an employee, agent, or other person authorized to provide an aid, benefit, or service under Middlebury's education program or activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

**8. Retaliation** means intimidation, threats, coercion, or discrimination against any individual by Middlebury, a student, or an employee or other person authorized by Middlebury to provide aid, benefit, or service under Middlebury's education program or activity, for the purpose of interfering with any right or privilege secured by this Policy, or because the individual has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation or proceeding regarding potential violations of this Policy.<sup>[2]</sup> Retaliation also means taking an adverse action against a person because of their report of prohibited conduct or participation in any procedure(s) under this Policy, including intimidation, threats, coercion, harassment or negative employment or educational actions that would discourage a reasonable person from engaging in activity protected by this Policy. Middlebury will not engage in retaliation and will investigate and address reports of retaliatory conduct. Retaliation under this policy may be found whether or not the

underlying complaint is ultimately found to have merit. Complaints of retaliation should be reported to the Civil Rights & Title IX Coordinator (“CRTIX Coordinator”) in accordance with the applicable investigation and adjudication procedures.

**9. Sexual Assault** can be committed by any person against any other person, regardless of gender, gender identity, sexual orientation, or past or current relationship status, and with or without physical resistance or violence. In accordance with federal law and regulations, the definition of Sexual Assault in this Policy incorporates the definitions of the FBI’s Uniform Crime Reporting (NIBRS) program, and includes:

1. rape (defined below),
2. fondling without consent (defined below),
3. incest (defined below), or
4. statutory rape (defined below)

**10. Rape** means

- The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of that person;
- Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person; and/or
- To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person. An “object” or “instrument” is anything other than a penis.

**11. Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Reporting Individual, including instances where the Reporting Individual is incapable of giving consent (as defined below) because of their age or because of their temporary or permanent mental incapacity; for purposes of this definition, “private body parts” is defined as a person’s breast(s), buttock(s), groin or genitals, and prohibited touching may be over or under clothing.

**12. Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the law of the state where the conduct occurred.

**13. Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent in the state where the conduct occurred.

**14. Stalking** means engaging in two or more acts directed at a specific person that would cause a reasonable person to either (i) fear for the person’s safety or the safety of others; OR (ii) suffer



substantial emotional distress. For purposes of this definition:

1. Acts means acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Reporting Individual.
3. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**15. Consent** means words or actions, affirmatively, unambiguously and voluntarily spoken or engaged in by each party, which a reasonable person would interpret as a willingness to participate in agreed-upon sexual conduct.

Consent is not present or valid when a person is incapable of consenting, as defined below; when intimidation, use of force, threat of force, or other actions that a reasonable person in that person's circumstances would consider coercive are applied; when that person is placed in fear that any person will suffer imminent bodily injury; when a physical or mental condition is present such that the person cannot knowingly or voluntarily give consent; or when a person is under the age of 16. Silence, non-communication, or a lack of resistance does not necessarily imply consent. Previous relationships or consent do not imply consent to future sexual conduct. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be revoked at any time.

A person is "incapable of consenting" for purposes of this Policy if they:

- are incapable of understanding the nature of the conduct at issue;
- are physically incapable of resisting, declining participation in, or communicating unwillingness to engage in the conduct at issue; or
- are asleep, unconscious, or otherwise unaware that the conduct is occurring; or
- lack the mental ability to make or communicate a decision about whether to engage in the conduct at issue.

A person may be incapable of consenting due to the effects of alcohol, drugs or other intoxicants, or due to a physical, mental or other condition.

The use of alcohol or drugs does not minimize or excuse a person's responsibility for committing sexual misconduct, or that person's responsibility for determining whether another is capable of giving consent, as described above.

Determinations regarding whether a person is responsible for violating this Policy will be made by considering whether the person knew, or a reasonable, unimpaired person in their circumstances should have known, that the other person was incapable of consenting to the sexual conduct at issue.

**16. Coercion** means the use of unreasonable pressure to gain sexual access. Coercion is more than a momentary effort to persuade, entice, or attract another person to engage in sexual activity. When a person makes clear a decision not to engage in sexual activity, or makes a decision to stop sexual activity, or a decision not to go beyond a certain sexual activity, continued pressure to engage can be coercive. In evaluating whether coercion was used, the College will consider: (i) the frequency of the application of pressure; (ii) the intensity of the pressure; (iii) the degree of isolation of the person being pressured; (iv) the duration of the pressure; and (v) any other similar or related conduct.

**17. Reporting Individual** means

1. A student or employee who is alleged to have been subjected to conduct that could constitute a violation of the Non-Discrimination Policy; or
2. A person other than a student or employee who is alleged to have been subjected to conduct that could constitute a violation of the Non-Discrimination Policy and who was participating or attempting to participate in Middlebury's education or employment program or activity at the time of the alleged prohibited conduct.

**Reporting Individual** also means "complainant" as that term is used in Federal law (including the Title IX regulations issued in April 2024).

**18. Complaint** means an oral or written request for Middlebury to investigate and make a determination about alleged violations of the Non-Discrimination Policy.

**19. CRTIX** means Middlebury's Civil Rights & Title IX office.

**20. Reasonable Person** means a reasonable person under similar circumstances and with similar identities to the Reporting Individual.

**21. Respondent** means a person who is alleged to have violated Middlebury's Non-Discrimination Policy.

**22. Party** means a Reporting Individual or Respondent.

**23. Prohibited Conduct** means conduct that is prohibited by this Non-Discrimination Policy.

**24. Supportive Measures** are non-punitive, non-disciplinary individualized services offered as appropriate, as reasonably available, and without fee or charge that are calculated to restore or preserve access to Middlebury educational or employment programs, activities, and resources, and/or to provide support during a resolution process.

**25. Preponderance of the Evidence** is an evidentiary standard (e.g., the level of evidence that is sufficient to persuade a decisionmaker that there was a policy violation) that means “more likely than not,” or, greater than 50%.

Please also see [Appendix B: Applicable Definitions: U.S. State and Federal Law where Middlebury Operates Programs](#).

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[1] The exception is that, under applicable provisions of Vermont law, an additional standard for prohibited hostile environment harassment applies in the specific context of an employee Reporting Individual who is working in a Middlebury program or activity in Vermont. Under this standard: to “harass” means to engage in unwelcome conduct based on an employee Reporting Individual’s protected characteristic(s) that interferes with the employee’s work or creates a work environment that is intimidating, hostile or offensive. In determining whether conduct constitutes harassment: (A) The determination will be made on the basis of the information gathered in an investigation as a whole, according to the totality of the circumstances, and a single incident may constitute unlawful harassment; (B) Incidents that may be harassment will be considered in the aggregate with varying types of conduct and conduct based on multiple characteristics viewed in totality rather than in isolation; (C) Conduct may constitute harassment, regardless of whether: (i) the complaining employee is the individual being harassed; (ii) the complaining employee acquiesced or otherwise submitted to or participated in the conduct; (iii) the conduct is also experienced by others outside the protected class involved in the conduct; (iv) the complaining employee was able to continue carrying out the employee’s job duties and responsibilities despite the conduct; (v) the conduct resulted in a physical or psychological injury; or (vi) the conduct occurred outside the workplace. Harassment need not be severe or pervasive to constitute prohibited harassment under this standard, but behavior that a reasonable employee with the same protected characteristic(s) would consider to be a petty slight or trivial inconvenience will not constitute harassment in violation of this Policy.

[2] However, Middlebury may, without violating this prohibition on Retaliation, require an employee or other person authorized by Middlebury to provide aid, benefit or service under Middlebury’s program or activity to participate as a witness in, or otherwise assist with, an investigation or proceeding under this Policy.