

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. 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. Different types of behavior are subject to different procedures, in accordance with federal law.

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 for raising an allegation of discrimination, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices 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 Middlebury’s educational mission.

Scope:

This Policy applies to all 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, MiddCore, Bread Loaf School of English, Bread Loaf Writers’ Conference, Middlebury College Schools Abroad, and the Middlebury Institute of International Studies at Monterey.

Types of Behavior Prohibited by Law and this Policy:

Members of and visitors to the Middlebury community are prohibited from engaging in:

- (i) Sexual Harassment as defined by Title IX, including but not limited to sexual assault, domestic and dating violence and misconduct, sex-based stalking, and *quid pro quo* sexual harassment;
- (ii) Discriminatory harassment, based on or motivated by an individual’s actual or perceived race, creed, color, place of birth, ancestry, ethnicity, religion, national origin, age, disability, marital status, pregnancy or sex, sexual orientation, gender identity or expression (including but not limited to sexual assault, domestic and dating violence and misconduct, and stalking) not meeting the definition of Title IX Sexual Harassment, or other characteristics as defined and protected by law in the location where a particular program is operating (e.g. crime victim status in Vermont); and
- (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 race, creed, color, place of birth, ancestry, ethnicity, national origin, religion, sex, sexual orientation, 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 (e.g. crime victim status in Vermont).

Defining Prohibited Conduct:

1. Domestic violence means conduct that constitutes a crime of violence in the relevant jurisdiction (either felony or misdemeanor) committed:
 - a. By a current or former spouse or intimate partner of the victim;
 - b. By a person with whom the victim shares a child in common;
 - c. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - d. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - e. By any other person against an adult or youth victim 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.
2. 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 victim.
3. Discrimination in employment, admission or access to Middlebury’s education or extracurricular activities means taking an action against a person based on or motivated by that individual’s protected characteristic(s) (identified in (iii) above).
4. Discriminatory harassment means verbal, written, visual, or physical conduct based on or motivated by an individual’s actual or perceived sex, sexual orientation, gender identity or expression, race, creed, color, place of birth, ancestry, ethnicity, religion, national origin, age, disability, marital status, or other characteristics defined and protected by local law, that has the purpose or

effect, from the point of view of a reasonable person, of objectively and substantially:

- a. undermining and detracting from or interfering with an individual's educational or work performance or access to Middlebury resources; or
 - b. creating an intimidating, hostile, or abusive educational, work, or living environment.
5. *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 if:
- a. submission to that conduct is made either explicitly or implicitly a term or condition of employment or educational status; OR
 - b. 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.
6. Retaliation means intimidating, threatening, or coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing regarding violations of this Policy. 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 CRTIX, under the procedures described below.
7. 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. Sexual Assault in this Policy includes:
- a. rape,
 - b. fondling without consent,
 - c. incest, or
 - d. statutory rape
8. 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.

Other Definitions:

Consent means words or actions, freely and actively given 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 giving consent because they are incapacitated by drugs or alcohol; when intimidation, threats, physical 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 rescinded at any time.

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.

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.

Investigation and Resolutions Procedures.

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

(A) Title IX Investigation & Resolutions Procedure

In accordance with Federal law and the Title IX regulations issued in May 2020, all Title IX Sexual 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, committed in an education program or activity of Middlebury in the United States;
- (ii) *Quid pro quo* sexual harassment committed in an education program or activity of Middlebury in the United States by which an employee of Middlebury conditions the provision of a Middlebury aid, benefit, or service on a student's or employee's participation in unwelcome sexual conduct; and
- (iii) Severe, pervasive and objectively offensive sexual harassment on the basis of sex committed in an education program or activity of Middlebury in the United States that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to the College's education program or activity.

(B) Non-Discrimination Investigations & Resolutions Procedure

All other conduct prohibited by this policy that is not covered by Middlebury's Title IX Investigation & Resolutions Procedure is investigated and adjudicated using Middlebury's Non-Discrimination Investigation & Resolutions Procedure.

(C) General Conduct Procedures.

Middlebury prohibits other violent, threatening or exploitative conduct, some of which may have been included in previous versions of Middlebury's SMDVS Policy, but for which the respondent need not be motivated by an individual's actual or perceived protected status in order for a violation to be found, such as dating misconduct and sexual exploitation, through its conduct policies for students, staff and faculty.

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 consumption. While not condoning infractions of any kind, to encourage reporting, Middlebury may, where appropriate, offer leniency with respect to other policy violations that may be revealed as a result of a report, particularly those involving underage drinking or drug use. The nature and scope of the leniency will depend on the particular circumstances involved. 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.

Confidentiality

Middlebury will treat information it has received 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 violations of its policies. More detailed information on confidentiality can be found in the appropriate Procedure.

Glossary of Terms

Acts – 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.

Dating violence – 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 based on the reporting party'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.

Domestic violence – 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 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.

Fondling – Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent (as defined above) 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.

Harassment – 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 race, creed, color, national origin, marital status, sex, sexual orientation, gender identity, or disability, which has the type of purpose or effect described above. With respect to Middlebury programs operating in states other than Vermont (e.g., California, New Mexico, 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.

Incest – Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Rape – Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent (as defined below) of the victim.

Reasonable person – Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Retaliation – Retaliation can include making charges against an individual for conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course

of a grievance process under this policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility is not alone sufficient to establish that any party made a materially false statement in bad faith.

Actual or perceived sex – 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.

Statutory rape – Statutory rape is sexual intercourse with a person who is under the statutory age of consent.

Substantial emotional distress – Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

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