

# Frequently Asked Questions about Open Expression

## What is the purpose of the Open Expression Policy?

The Policy affirms that our civic discourse is premised on the fundamental equality of all Middlebury community members; recognizes the historical importance of nonviolent public protest and demonstration; and explicitly defines key disruptive behaviors that will be subject to penalties. It both *protects* peaceful assembly and expression and *prohibits* interference with the exercise of such freedoms by others on our campus.

## Who wrote the Open Expression Policy?

In 2018, faculty of the College and the Institute endorsed a statement about our three pillars: academic freedom, integrity, and respect. That language became the [Preamble to our Handbook](#) for the academic year 2018-2019. During that year, a group of faculty, staff, and students on the Faculty Council-appointed Policy Working Group took the three pillars statement and considered how that related to speech and protest. That draft policy was shared with the Middlebury community in May 2019. The new Open Expression Policy was adopted by the President and the Senior Leadership Group in November 2019, based primarily on the proposal of the Policy Working Group.

## Is all expression permissible?

There are limits to the appropriate range of expression in any setting. Some are legal limits: speech and expression may not incite or threaten physical violence, be defamatory, or violate our Anti-Harassment/Discrimination Policy. Speech and expression are also regulated by [our policies](#) about time, place, and manner. For example, a student may not speak non-stop in class in a way that prevents the faculty member from teaching. Wooden or hard signs may not be carried into event spaces, as they could injure someone.

We want all members of our community to feel empowered to speak up, to ask challenging questions, to present new and controversial ideas. It is only through the presentation and scrutiny of different perspectives that together we develop the ability to confront and solve complex problems and exercise forms of collaborative leadership in diverse social and professional settings.

## Can I protest?

Yes. Peaceful protest has been a force for progressive change on Middlebury campuses and elsewhere for generations, and the ability to challenge or question views or ideas is fundamental to our mission.

As an academic institution, Middlebury has an obligation to ensure that the regular academic and administrative business (regularly scheduled lectures, classes, exams, administrative meetings, etc.) continues unhindered. Middlebury will accordingly take such steps as are necessary to ensure appropriate conditions to enable a conducive learning, working, and living environment, and that academic and general facilities, property, and equipment are available for use for their regular purposes as part of Middlebury's ongoing academic and administrative business.

## Isn't protest inherently "disruptive"?

Yes, and the Policy on Open Expression recognizes that protest and civil disobedience have been powerful tools to call for change in our country and our community. Only actions that are "substantially disruptive" are prohibited by the Policy. Middlebury's former policy prohibited "disruptive" protest and demonstrations. The new policy prohibits "substantially disruptive" behavior. Examples in the Policy include preventing the speech of others, blocking the passage of people or vehicles, causing property damage, endangering other people's safety, etc.

## What are examples of protests or behaviors that are not "substantially disruptive"?

The list is almost endless, but a number of examples are:

- Letters, op-eds, or posters shared before, during, or after an event
- Gathering peacefully outside an event, providing leaflets or literature, or encouraging the signing of petitions without blocking entrances or exits, traffic, or preventing others from entering
- Communicating disagreement quietly within the event space may include holding cards or soft signs without obstructing the view of other people, wearing a particular color; putting tape over one's mouth, turning one's back on the speaker without blocking others' views, or walking out without preventing the event from occurring
- Organizing alternative events such as a speaker, panel or demonstration or other public forum
- Holding a teach-in or vigil
- Organizing an exhibit
- Peaceful marches (use of roads may require a permit and advance planning)
- Temporary displays or symbolic structures, with attribution and contact information

While these actions may not be “substantially disruptive,” the behavior must also conform to other Middlebury policies. For example, it must be non-discriminatory, non-defamatory, not threatening, etc.

### **What is “substantial disruption”?**

Middlebury protects the expression of all community members up to the point that their expression prevents another's expression from being heard or experienced. A number of types of expression may be minimally disruptive, depending on the context. For example, it may be disruptive to have a group of protesters dressed a specific way in a parade, briefly stop the parade and express an objection, and then step out of the parade route to allow it to continue. This would not be “substantially disruptive.” It would be minimally disruptive for a group of audience members wear a specific color, sit together, and turn their backs on a speaker.

Substantial disruption is disruption that prevents the meaningful expression of another person or substantially disrupts campus activities or operations. For example, creating a physical barrier to prevent an individual from entering a building for an event is substantially disruptive. Going around campus and tearing down every poster that a student organization has put up would likely be substantially disruptive. Examples in the Policy include preventing the speech of others, blocking the passage of people or vehicles, causing property damage, endangering other people's safety, etc.

### **Is a demonstration consistent with the Open Expression policy as long as it does not include physical violence?**

No. The absence of violence does not necessarily mean compliance with policy. Various activities, including those detailed above, are substantially disruptive or interfere with the rights of others.

### **Is a direct order to disperse at the time of a demonstration a necessary pre-condition for concluding a policy has been violated?**

No. Members of our community are expected to know and abide by all Middlebury policies. A direct order to disperse is not a necessary precondition to determine a policy violation on our campus.

### **So, the policy prevents people from doing anything substantially disruptive?**

No. Individuals may still choose to engage in substantially disruptive behavior. However, there are consequences for those actions. There may be disciplinary consequences through Middlebury's processes and, if the behavior violates the law, individuals may be subject to arrest and criminal charges.

### **Does Middlebury support diversity and inclusion?**

Absolutely. In President Patton's words, we strive to practice “an everyday ethic of inclusion” as we work to make Middlebury a place where everyone's voice can be heard. We know we benefit from a world where

every individual is able to contribute.

## **Why doesn't Middlebury shut down unpopular or potentially controversial speakers or events?**

As an institution of higher learning, Middlebury is committed to freedom of expression and association for all its members, and to promoting and supporting the consideration, discussion, and questioning of ideas, even if they are unpopular or controversial. Middlebury unequivocally supports the right of speakers to speak and be heard, even if we as a community choose different values and vehemently disagree with a speakers' content. Limiting expression would be in conflict with our vision statement that we seek a world with a robust and inclusive public sphere.

## **What does the requirement not to use "significant Middlebury resources" mean?**

Middlebury resources are required to be directed to our educational mission and may not be used for political speech, defamatory speech, or other expression that violates Middlebury policies. All funds in Middlebury accounts are Middlebury resources.

## **Do groups of non-Middlebury people have a right to engage in demonstrations on our campus?**

No. We do not permit groups or organizations that are not affiliated with Middlebury to use our private campuses for demonstrations without our written consent. Middlebury events may be open to individual members of the public, or not, but Middlebury's campuses are private property. Unaffiliated groups using Middlebury property for non-Middlebury activities are trespassing and are subject to arrest by local law enforcement.

## **How does Middlebury resolve the tension between open expression and inclusion?**

At Middlebury, we believe these values reinforce each other— expression ensures inclusion, and inclusion enriches expression. We are, in the words of the Committee on Speech and Inclusion, committed to creating "inclusive settings for robust dialogue and wide-ranging speech." We are obligated both to uphold these principles and to bring into the discussion more people for whom access to the public square has been limited.

## **What happens if someone is disruptive?**

In some cases, a member of the VPSA staff, a Public Safety officer, or other Middlebury official may be present and may deliver a written card that reminds community members about our commitment to open expression and notifies them that their behavior violates the policy. This functions as a warning. As the Policy specifies, an individual whose conduct is disruptive will "generally be warned once and then be subject to discipline for such behaviors." Substantial disruption may result in the demonstration being dispersed, which typically is completed by local law enforcement officers. Substantial disruption generally results in serious disciplinary consequences for the responsible individuals.

If law enforcement officers such as Middlebury Police officers or State police officers are present and a person is breaking the law, such as by engaging in violence or trespassing, that person is subject to arrest.

## **I'm an enrolled Middlebury College student. Can't I be anywhere on the campus without trespassing?**

No. If you refuse to leave a private office when asked, you are trespassing. If you gain access to the library or the Grille when they are closed, you are trespassing. In general, it is true that students are welcome in many places on campus, at most hours. However, residence rooms and offices are private, academic and administrative buildings are closed at night, and various spaces are restricted for a variety of reasons. As a

private property owner, Middlebury may set restrictions on its buildings and people who do not obey those restrictions may be arrested for trespassing. Ordinarily, Middlebury warns individuals that they are in a restricted area or have stayed past the opening hours of a building, and it is only after such a warning that an individual would be considered trespassing. We usually do this by having a Middlebury official deliver a written notice that an individual has been warned and may not repeat or continue to trespass.

### **What specific penalties are given for substantially disruptive protest?**

Our procedures and types of penalties for faculty, staff, and students vary. However, the Open Expression Policy reflects our three pillars of academic freedom, integrity, and respect, and violations of the Policy are considered serious conduct matters for all members of our community. Guidelines for student sanctions are described in the [Demonstration Regulations](#), increasing in seriousness based on the severity of the disruption. As an example, a student who engages in prolonged behavior that is substantially disruptive and results in the need for local law enforcement resources to support our campus should expect to receive some form of official college discipline. Sanctions may vary for a variety of reasons, including that our discipline sanctions are generally cumulative, so prior discipline matters will result in more serious sanctions.

For undergraduate students in the College, the broader context is how we think about our community standards. Since creating the Office for Community Standards, our goals are to address all alleged policy violations in ways that are community focused, learning centered, and procedurally sound. In other words, we don't address incidents with a one-size-fits-all approach. The Office is committed to exploring restorative options as a means to address harm and accountability when appropriate.

Penalties for faculty and staff who violate the Policy on Open Expression and these Demonstration Regulations will be determined in accordance with the appropriate Handbook procedures, and would be guided by the same principle that the more serious and effective the disruption, the more significant the penalty.

### **Can Middlebury set up specific areas for demonstrations to take place, or require demonstrators to stay a certain distance away from entrances or exits to buildings?**

Yes. The location of a demonstration will be determined by Events Management and other offices. Demonstrations ordinarily occur in outdoor areas of a Middlebury campus that are generally accessible to members of the public. Depending on security needs, Middlebury may require demonstrators to avoid a certain area or limit the areas in which demonstrations may occur. Participants in demonstrations must abide by any written or verbal instructions given in this regard.

### **Can Middlebury document through video and other means the conduct of participants in a demonstration?**

Yes. Documenting a demonstration provides protection both for those participating as evidence of peaceful activity and Middlebury, as evidence of any policy violation. It is helpful for holding both participants and Middlebury accountable for compliance with all policies.

### **Can Middlebury limit the type of objects used during a demonstration?**

Objects normally permitted on campus may be prohibited when used in a manner that violates other policies (e.g., when the use of a permitted object creates a hostile environment or is used in a threatening manner). If a Middlebury official determines that an object is being used in violation of policy, demonstrators will be required to comply with whatever orders are given for the disposition of the item.

### **Does everyone have to provide photographic identification to a Middlebury official upon request during events, including demonstrations?**

Yes. Community members may be asked for school-issued identification at any time, including during demonstrations, by Middlebury officials to confirm that the person is a member of the community and has the

right to be on our campus. Students, specifically, are obligated under our [Handbook policies](#) to identify themselves when asked to do so by a Middlebury official, including Public Safety as well as other staff. Members of the public may also be asked for identification.

For additional information regarding planning and organizing protests and demonstrations, please review the revised [Demonstration Regulations](#). If there are additional questions you believe should be added to this list, please email [openexpression@middlebury.edu](mailto:openexpression@middlebury.edu).