

# 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 Non-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. 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
- 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 posters that a student organization has put up would likely be substantially disruptive. Even a brief disruption of a class or scheduled educational activity may be considered substantially disruptive because of the importance of our educational mission. 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 leafletting considered “substantially disruptive”?**

No, not by itself. Distributing leaflets, pamphlets, or informational flyers is generally a minimally disruptive form of open expression that does not require registration or prior approval, unless the group doing leafletting wants to reserve specific space on Middlebury’s campus to do so.

While the act of handing out written information is open expression protected by Middlebury’s Policy, other behaviors that someone might engage in while leafletting could cause substantial disruption. Leafletting in ways that prevent others from speaking, listening, or moving freely, that significantly interferes with campus operations, or that uses discriminatory, threatening, or defamatory language, may be deemed a substantial disruption or a policy violation and addressed accordingly.

Leafletting is permissible when it:

- Occurs in outdoor or common spaces that are open to expressive activity;
- Does not block entrances, walkways, or building access;
- Allows individuals to choose freely whether to accept materials;
- Uses bulletin boards or posting areas designated by the College for such purposes; and
- Ensures that all distributed materials and related expression are non-discriminatory, non-defamatory, and not threatening, in accordance with the College’s Non-Discrimination, Harassment, and Community Standards Policies.

Leafletting or related conduct may be considered substantially disruptive if it:

- Blocks or obstructs access to buildings, walkways, classrooms, or events;
- Interrupts classes, meetings, or scheduled events by entering instructional spaces or presentation areas to distribute materials;
- Follows, surrounds, or repeatedly confronts individuals who decline to accept materials;
- Creates litter, safety hazards, or property damage through improper posting or distribution;
- Uses amplified sound, aggressive, or hostile behavior that interferes with others’ ability to engage in expression or campus activity; or
- Involves discriminatory, defamatory, harassing, or threatening language or imagery, or otherwise violates Middlebury policy and/or law.

Behaviors associated with leafletting may result in disciplinary consequences through Middlebury’s processes and, if the conduct violates the law, individuals may be subject to arrest and criminal charges.

## **Is an Event Scheduling Request required for all protest or demonstration activities?**

Not all protests automatically require an Event Scheduling Request. Generally, protests and demonstrations that require the submittal of an Event Scheduling Request include:

- the reservation of specific space on Middlebury’s campus;
- the possibility of large crowds;
- the potential to disturb classes, events, or regular campus operations;
- the use of amplified sound, equipment, or restricted areas; or,
- have potential safety hazards.

The distribution of leaflets, pamphlets and flyers do not require submission, unless the group doing the distribution would like to reserve specific space.

Protest and demonstration requests should be made 2 business days prior to the planned event. If you are unsure if an Event Scheduling Request is needed in your specific case, contact Events Management for a determination.

**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 and impair Middlebury's pursuit of its educational mission.

**Is a direct order to disperse at the time of a demonstration a necessary precondition 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 (or refrain from a specific behavior) 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 former President Laurie 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 speaker's opinions or arguments. 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.

## **Are all employees permitted to participate in protests or demonstrations on Middlebury's campuses?**

Employees are free to express their personal beliefs and views in their personal time. Expressive activity by employees during their working hours and/or on a Middlebury campus is subject to limitations that are distinct from the Open Expression Policy. First, employees, including both faculty and staff, are responsible to perform the job functions that Middlebury compensates them for during their workdays. Therefore, expressive activity cannot unreasonably interfere with the performance of an employee's core responsibilities, for example, by taking an employee away from their assigned work location for part of the workday. Second, our educational mission means that our employees are responsible for supporting all of our students, without discrimination on the basis of protected personal characteristics. Middlebury employees, both faculty and staff, play a critical role in demonstrating how open expression in service of academic freedom thrives in our residential, academic environment. When we affirmatively signal to all our students that regardless of identity, religion, or political views, they will be treated fairly and assessed according to stated expectations, it grows students' capacity to engage in open inquiry. It is essential to our educational mission that all of our students feel comfortable participating in our educational programs, engaging with our faculty, visiting our dining halls, career services, or the library, and various other support/administrative/academic offices.

Therefore, expressive activity that unreasonably interferes with an employee's ability to perform their job functions, or that reasonably could lead students who identify in particular groups to feel the employee is biased against them, may have consequences for the employee's ability to continue functioning in their job, which will be addressed through performance management. If an employee has questions about whether their participation in expressive activity on Middlebury's campus is appropriate or not, they are encouraged to check in with their supervisor and/or Human Resources prior to participation.

Finally, all employees, like all individuals on Middlebury's campuses, are expected not to violate the Open Expression Policy, for example, by being substantially disruptive to our essential operations. Violations of the Open Expression Policy may result in performance management and/or discipline by the appropriate office or department.

## **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 always striving 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 Middlebury official may be present and may deliver an oral warning that reminds community members about our commitment to open expression and notifies them that their behavior violates the policy. Staff in these roles are trained to introduce and identify themselves as they share the 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 are outside of the opening hours of a building, and it is only after such a warning that an individual would be considered trespassing. While most events on campus are open to all students, there might be some events that are only open to certain members of our community or are private events. Entering these types of events uninvited could be considered a violation.

## **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 impact 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 or substantial the disruption is, 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. Depending on security needs, Middlebury may require demonstrators to avoid a certain area or limit the areas in which demonstrations may occur. If needed, 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. Participants in demonstrations must abide by the requirements set by the Event Protocol Committee, including Public Safety, at the time of scheduling the event, as well as 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 well 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?**

Yes. 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. Staff in these roles are trained to introduce and identify themselves as they request identification. 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.

Any Middlebury official asking for identification is expected to identify themselves as well by their name and department during the time of engagement.

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).