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B.1.b. Non-Discrimination Investigations & Resolutions Procedure

NOTE: This Procedure is effective August 1, 2024, and does not apply retroactively. For Prohibited Conduct allegedly occurring before August 1, 2024, the College will apply the definition of Prohibited Conduct and procedures in place at the time of the alleged conduct.^[a] For Prohibited Conduct allegedly occurring on or after August 1, 2024, the definition of Prohibited Conduct and procedures set forth in this Procedure will apply, to the fullest extent permitted by applicable law. Middlebury retains discretion to make appropriate adjustments to promote fairness and consistency. The Parties will be notified in advance of any proceedings which definition(s) and procedures apply.

[a] The policies and procedures that were in effect immediately prior to the effective date of the current policies and procedures can be found [here](#).

A. General Provisions

I. Purpose

Middlebury strictly prohibits conduct that constitutes unlawful protected personal characteristic-based discrimination and harassment, as well as related retaliation, through its [Non-Discrimination Policy](#). This Non-Discrimination Investigations and Resolutions Procedure (“Procedure”), administered by the [Middlebury Civil Rights and Title IX office](#) (“CRTIX”), is intended to address instances of prohibited discrimination and harassment that are not required by the Department of Education to be handled under Middlebury’s Title IX Investigations & Resolutions Procedure. CRTIX may, depending upon the circumstances, vary from this Procedure. So long as such a variation is consistent with relevant law and allows for fundamental fairness in the processes followed, variations from this Procedure under those circumstances will not invalidate an outcome or constitute a basis for appeal.

II. What this Procedure Covers

This Procedure applies to all alleged violations of the Non-Discrimination Policy not meeting the definition of Title IX sexual harassment, and to allegations of related retaliation, in both employment and access to educational opportunities.^[1] Where a complaint alleges other Middlebury policy violations arising out of the same facts and circumstances as allegations that must be addressed

utilizing this Procedure, Middlebury may, in its discretion, address those other alleged violations through this Procedure.

Except as otherwise specified herein, this Procedure applies to all Middlebury students,^[2] faculty, and staff, as well as to others who were participating or attempting to participate in Middlebury's educational or employment programs and activities at the time the alleged misconduct occurred. This includes the undergraduate college, the Language Schools, the School of the Environment, Bread Loaf School of English, Bread Loaf Writers' Conference, the Middlebury Institute of International Studies at Monterey ("the Institute"), and the Schools Abroad. Faculty and staff are, together, referred to as "Employee" or "Employees" in this Procedure.

B. Reporting Violations of the Non-Discrimination Policy

Middlebury encourages individuals to report potential violations of the Non-Discrimination Policy so that they can obtain support and information and so that Middlebury can respond appropriately.

In addition, as will be described below, Middlebury employees who learn of potential violations of the Non-Discrimination Policy are required to report that information to the Civil Rights and Title IX Coordinator ("CRTIX Coordinator"^[3]) unless they are deemed Confidential Resources (see below subsections B.II and B.III).

I. Making A Report

Any person who believes that they have been impacted by a violation of the Non-Discrimination Policy, or who has reason to believe that one has occurred or is occurring, should report this information to the immediate attention of the CRTIX Coordinator or to the Deputy Civil Rights and Title IX Coordinator ("Deputy CRTIX Coordinator") at:

Butterfly Blaise Boire Civil Rights and Title IX Coordinator Middlebury College Service Building, Room 213 84 S Service Rd Middlebury, VT 05753 (802) 443-2147 bboire@middlebury.edu

Taryn Moran Deputy Civil Rights and Title IX Coordinator Middlebury College Service Building, Room 218 84 S Service Rd Middlebury, VT 05753 (802) 443-5840 tarynm@middlebury.edu

You may also report to knowyourrights@middlebury.edu, by using the online reporting tool at *go/report*, or by visiting this [link to the official reporting form](#).

Middlebury's CRTIX office staff also includes Human Relations Officers ("HROs")^[4] who are able to receive reports of violations of the Non-Discrimination Policy in the event that the CRTIX Coordinator or Deputy CRTIX Coordinator are not available. For more information about the CRTIX office staff (including contact information), please visit <https://www.middlebury.edu/title-IX/about>. Concerns about discrimination, harassment, or related retaliation engaged in by any member of the CRTIX office should

be directed to Middlebury's Deputy General Counsel & Risk Officer, Sue Ritter at [\(802\) 443-3289](tel:8024433289) or sritter@middlebury.edu.

II. Confidential Reporting

Some members of the Middlebury community have legal obligations or privileges not to disclose information that is shared with them in their professional capacities. These individuals are “Confidential Resources” who can be told about potential Non-Discrimination Policy violations in a confidential manner—meaning, they will not share with anyone else (including CRTIX) the information that has been disclosed to them in a way that identifies a reporting Party or the individuals involved in an incident of Prohibited Conduct (unless they are requested to by the reporting Party or a legal obligation requires it). Confidential Resources^[5] include:

- Medical and support staff at the Middlebury Center for Health & Wellness (including SANE nurses)
- Counseling Services
- MiddCare
- Chaplains within the Scott Center

In addition, an employee of Middlebury who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about protected characteristic based discrimination and harassment is a Confidential Resource. The employee's confidential status, however, is only with respect to information received while conducting the study.

Confidential Resources must explain to any reporting Party who describes conduct that reasonably may constitute Prohibited Conduct:

- The Confidential Resource's status as confidential for purposes of this Procedure, and that they will not report information about conduct that reasonably may constitute Prohibited Conduct to CRTIX without the reporting Party's permission;
- How to contact CRTIX and how to make a complaint of Prohibited Conduct; and
- That CRTIX may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under Middlebury policy and procedures.

Individuals who report incidents of discrimination and harassment to Confidential Resources should be aware that in certain limited circumstances, confidentiality may not be absolute.^[6]

III. Mandatory Reporting

All Middlebury faculty and employees, other than those designated as Confidential Resources under the circumstances described above, are required to promptly report all known information about conduct that reasonably may constitute actual or suspected violations of the Non-Discrimination Policy to the CRTIX Coordinator or Deputy CRTIX Coordinator. This requirement applies to student-employees who receive such information in the context of their employment. Failure of an employee to report as required is a violation of Middlebury Policy and can subject an employee to disciplinary action.

IV. Prohibition on Making False Reports

Middlebury prohibits intentionally making a false report or providing false or misleading information in the reporting of a complaint. Reporting Individuals will not be deemed to have provided false or misleading information under this Procedure if their factual allegations are intended to be truthful and are made in good faith, regardless of whether the conduct complained of is ultimately found to constitute a policy violation.

C. Supportive Measures and Non-Adjudicative Response Options

In many instances when CRTIX receives a report of alleged violations of the Non-Discrimination Policy, an investigative and adjudicative process (see Section D) will follow. If investigation and adjudication is not possible or is not the most appropriate means of addressing the allegations, CRTIX may take other actions depending on the circumstances, as described below. (These actions may also be taken in conjunction with an investigation).

I. Supportive Measures

Once CRTIX has received a report of an alleged Non-Discrimination Policy violation, a CRTIX staff member will engage in outreach to each known impacted Party to engage in a conversation about supportive measures.^[7] 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, or to provide support during an informal resolution process or an investigative resolution process. It is not necessary to participate in an investigation process in order to request supportive measures from Middlebury. Common supportive measures include: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; mutual restrictions on contact applied to one or more individuals; leaves of absence; changes in class, work, housing, or extracurricular activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to protected personal characteristic-based harm.

A Party seeking a supportive measure should request the measure by communicating with CRTIX, which will determine which supportive measures are reasonably necessary and appropriate. CRTIX will notify

both Parties, as appropriate, of approved, individualized supportive measures, and may deny, modify, or terminate any supportive measure based on all available information. Parties may also seek additional supportive measures or modification or termination of a supportive measure applicable to them if circumstances change materially. An impartial Middlebury employee, within CRTIX or otherwise, will determine whether or not to modify or reverse any initial decision to provide, deny, modify, or terminate supportive measures applicable to the Party requesting review. The question for consideration in such reviews will be whether the supportive measure under review is consistent or inconsistent with the definition of supportive measure stated above.

Middlebury will maintain as confidential any supportive measures provided to the Reporting Individual or Respondent, to the extent that maintaining such confidentiality would not impair the ability of Middlebury to provide the supportive measures.

All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by a supportive measure to Public Safety ([802-443-5133](tel:802-443-5133) or 802-443-5911) after hours or in an emergency or to CRTIX in circumstances outside of an emergency situation. Middlebury will take prompt and responsive action to enforce supportive measures, which may include additional supportive measures and/or disciplinary penalties under student or employment disciplinary policies, as applicable.

Middlebury may, as appropriate, modify or terminate supportive measures at the conclusion of any informal resolution process or investigative resolution process, or may continue them in the same or modified form beyond that point.

II. Emergency Removal and/or Administrative Leave

If a report indicates a risk of violence or an emergency situation, Middlebury may remove someone from its educational programs or from employment consistent with its [Emergency Removals Policy](#) and/or its Threat Assessment & Management practices.

When the Respondent is an employee, or a student employee accused of misconduct in the course of their employment, Middlebury may take action in the form of placing the employee on paid or unpaid Administrative Leave, depending on the circumstances.

III. Informal Resolution (Adaptable Resolution)

Reports to CRTIX that fall under this Procedure may be resolved through informal or “adaptable” resolutions, when appropriate. At all stages of the resolution process (including after an investigation has commenced), the CRTIX Coordinator, when appropriate, may make available to the Parties informal resolution options for resolving complaints. In assessing whether informal resolution is appropriate, the CRTIX Coordinator may consider factors such as, for example, (1) the nature of the allegations, (2) the agreement of the Reporting Individual and the Respondent, (3) other relevant factors such as any

disability of the Reporting Individual or the Respondent, (4) any history of misconduct or other policy violations by the Respondent, and (5) whether the alleged conduct would present a future risk of harm to others. A Party will not be required to engage in informal resolution and may end the informal resolution process at any time. If a Party ends the informal resolution process or if the CRTIX Coordinator determines that the process is either not appropriate or is unsuccessful, CRTIX shall continue to respond to the allegations in accordance with this Procedure.

To proceed with informal resolution, the CRTIX Coordinator must obtain the Parties' voluntary, written consent to the informal resolution process. Middlebury will not require or pressure a Party to participate in informal resolution or to engage in any particular form of informal resolution, and will not require waiver of applicable rights to participate in investigative resolution as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

IV. Referral to the Community Bias Response Team (CBRT)

When reports made to the CRTIX office do not fall within the scope of the Non-Discrimination Policy but involve behavior that allegedly has a negative impact based on protected personal characteristics, CRTIX may refer the matter to the Community Bias Response Team ([Middlebury CBRT](#)) to be addressed under CBRT's procedures.

It is not the purpose of CBRT to investigate, arbitrate, or to take the place of other Middlebury administrative processes; CBRT does not initiate disciplinary action or impose sanctions regarding bias incidents.

D. Investigation and Adjudication Process

I. Initial Assessment

Upon receipt of any report coming to CRTIX's attention, the CRTIX Coordinator conducts an initial assessment to determine whether additional steps by CRTIX are necessary. For matters clearly not implicating the Non-Discrimination Policy and for which a person has not requested an investigation by CRTIX, the CRTIX Coordinator may refer the matter to another Middlebury office or unit and may communicate back with the Reporting Individual that no further action will be taken by CRTIX.

Regardless of whether the CRTIX Coordinator determines that additional steps by CRTIX are necessary, the CRTIX Coordinator will engage in outreach to the impacted individual(s) and will offer supportive measures if applicable.

For those matters that require additional steps by CRTIX—i.e., matters where someone is explicitly asking for a CRTIX investigation or matters that are determined by the CRTIX Coordinator to potentially implicate the Non-Discrimination Policy—the CRTIX Coordinator informs an HRO[8] who in turn performs the following evaluation.

II. HRO Evaluation

The HRO (or designee) conducts an initial evaluation, for the purpose of determining whether an investigation can proceed, in which they assess:

1. Whether the Respondent and the alleged conduct are under Middlebury's authority; and
2. Whether the alleged conduct, if shown by a preponderance of the evidence to have actually occurred, could be a violation of the Non-Discrimination Policy^[9]

The HRO (or designee) may seek to obtain sufficient additional information to make this evaluation if the information available is insufficient on its own to allow for these assessments to be accurately made.

If the HRO (or designee) determines that both factors have been met and thus that an investigation can proceed, this information will be communicated back to the Reporting Individual by the CRTIX Coordinator, along with information about what the investigative process entails and information about alternative informal processes for resolving the matter (if applicable). The CRTIX Coordinator will also solicit the Reporting Individual's input as to whether the Reporting Individual wishes to proceed with an investigation. This input is given careful consideration but does not control whether an investigation will start.

Middlebury's obligation to respond to reported Prohibited Conduct occurring in its programs and activities may necessitate CRTIX to investigate even in situations where a Reporting Individual has not requested an investigation or has indicated that they do not wish to proceed with an investigation. The CRTIX Coordinator retains the discretion as to whether an investigation is initiated. The CRTIX Coordinator will consider, at a minimum, the following factors:

1. The severity of the alleged violation, including whether the violation, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the violation and prevent its recurrence;
2. The risk that additional violations would occur if an investigation is not initiated;
3. The scope of the alleged violation, including information suggesting a pattern, ongoing violations, or impacts to multiple individuals;
4. The age and relationship of the Parties, including whether the Respondent is an employee;
5. The availability of evidence to assist a decision-maker in determining whether a violation occurred;
6. The Reporting Individual's request not to proceed with initiation of an investigation;
7. The Reporting Individual's reasonable safety concerns regarding initiation of an investigation; and
8. Whether other options exist to end the violation and prevent its recurrence without initiating an investigation.

III. Closure Based on HRO Evaluation

In matters where the HRO determines either (i) that the alleged conduct, if it were established by a preponderance of the evidence, would not constitute a violation of the Non-Discrimination Policy or (ii) that the Respondent and/or the reported conduct are not subject to Middlebury's authority, the matter may be closed by CRTIX. When a matter is closed after the HRO's evaluation, the alleged conduct may be referred by CRTIX to another Middlebury office (including but not limited to Human Resources or Community Standards) or may be addressed under another resolution procedure, if applicable.

The CRTIX Coordinator will communicate back to the Reporting Individual(s) that an investigation is not available, and will offer supportive measures and/or refer the matter to another office or unit as applicable.

IV. Investigation

A. CRTIX decision re: Scope of the Investigation

Based upon their evaluation of the matter, the HRO will determine which allegations will be investigated, with which Respondent(s). Ordinarily the CRTIX Coordinator or Deputy CRTIX Coordinator will review a written version of the allegations with the Reporting Individual to confirm those assertions. In matters involving more than one Reporting Individual or more than one Respondent, CRTIX may consolidate the matters into a single investigation when the allegations arise out of the same facts or circumstances.

B. Written Notice issued

Once CRTIX has determined the scope of the investigation, the CRTIX Coordinator will ordinarily issue a written notice to the Parties,^[10] along with a copy of the Non-Discrimination Policy and this Procedure. The notice will indicate that Middlebury is investigating the possibility that the Respondent has violated the Non-Discrimination Policy using this Procedure and will ordinarily include:

- Specific information about the investigation and adjudication process that is applicable to the matter;
- A statement of the allegations of behavior potentially constituting a violation of the Non-Discrimination Policy, including sufficient details known at the time. Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting a violation of the Non-Discrimination Policy, and the date and location of the alleged incident, if known;
- A statement that retaliation is prohibited;
- The specific policies and offenses implicated by the alleged conduct;

- A statement that Middlebury's Non-Discrimination Policy prohibits knowingly making false statements, including knowingly submitting false information during the investigation and adjudication process; and
- The name of the investigator, along with information about the process to notify the CRTIX Coordinator of any conflict of interest that the investigator may have in advance of the interview process.
- The Notice Letter may be amended as appropriate during the course of the investigation.

C. Appointment of an Investigator

The CRTIX Coordinator appoints investigators, either a Middlebury employee^[11] or an external investigator, who serves as a neutral, impartial fact-finder. External investigators are supervised by a Middlebury HRO, including tracking the investigation for reasonable progress, assisting with the creation and maintenance of investigative records, and assisting the external investigator as necessary. ^[12] Other Middlebury officials may at times be called upon to assist with an investigation, depending on the circumstances.

In selecting the investigator for a particular matter, the CRTIX Coordinator will take care to select an individual who does not have a conflict of interest or bias against Reporting Individuals or Respondents generally or an individual Reporting Individual or Respondent. The CRTIX Coordinator will notify the Parties of the identity of the investigator before the formal investigation begins and Parties may, within 3 calendar days of such notice, object to the appointment of the investigator by providing a written statement (which may be transmitted electronically) as to why the Party believes that the investigator has a conflict of interest or bias. The CRTIX Coordinator will make decisions regarding such objections and the appointment of an alternate investigator, as necessary. The CRTIX Coordinator's decision about whether there is a conflict is final.

D. Fact Finding

The investigator is authorized to contact and schedule interviews with any and all individuals who may have relevant information. The nature and scope of the investigation is primarily within the discretion of the investigator. The investigator is authorized to access relevant records, except those legally protected as confidential or privileged or otherwise impermissible,^[13] and may collect any additional evidence relevant to the matter.^[14]

The Reporting Individual and Respondent will be asked to identify, preserve and submit all evidence (inculpatory and exculpatory)^[15] pertaining to the matter under investigation, and to identify witnesses they believe may have relevant testimony to share. The investigator is not required to consider particular evidence submitted or to interview any particular witness, even if identified by one of the Parties.

Interviews may be conducted in person, via videoconferencing (e.g., Zoom, Microsoft Teams), or by telephone. Interview participants may not make unauthorized recordings of investigative interviews or any other meetings occurring during the investigation and adjudication process.

All witnesses identified in connection with an investigation under this Procedure are expected to cooperate fully in the investigation by providing complete, accurate, and truthful information.

The investigation will be conducted in a prompt, thorough, fair, equitable, and impartial manner. If a Party or witness chooses not to participate in the investigation or becomes unresponsive, the investigator retains the right to continue it without their participation to ensure a prompt resolution.

The Parties may each have an Advisor present with them for any investigative interviews (or at any other meetings occurring during the investigation and resolution process).[16] Advisors are precluded from copying, sharing, describing, and/or otherwise disseminating any investigation- or adjudication-related materials to which they are privy, and they shall not disclose the contents of these materials to other Parties or individuals.

The advisor may advise the Party privately, but cannot act as a speaking advocate at any meeting or interview. An investigator or other Middlebury official may terminate meetings and remove or dismiss advisors if an advisor is disruptive or otherwise refuses to comply with the requirements of this Procedure.

E. Preparation of an Investigative Report

A written investigative report is completed by the investigator. The investigative report will impartially summarize the relevant evidence and may include as exhibits all evidence deemed by the investigator to be relevant and not otherwise impermissible. The investigator will provide the adjudicating HRO access to the investigative report and exhibits.[17]

The investigative report ordinarily will include proposed findings of fact based on the preponderance of the evidence standard (i.e., more likely than not). The investigative report will also ordinarily include the investigator's recommendation, based on a preponderance of the evidence standard, as to whether the Respondent should be found responsible for violating the Policy provisions at issue.[18]

Submission of the investigative report to the adjudicating HRO ordinarily brings the fact-finding phase of the investigation and adjudication process to a close. In some instances an investigator may be asked to perform additional fact finding or make updates to the investigative report depending on the outcome of the adjudicating HRO's review of the report and evidence file or depending on other circumstances warranting additional fact finding to be performed by the investigator.

V. HRO Adjudication Process

Submission of the investigative report to the adjudicating HRO starts the adjudication phase.

The adjudicating HRO will review the investigative report and any attached exhibits. The HRO is authorized to request additional relevant information directly from the Parties or witnesses if the HRO believes it is necessary to do so before making a determination, including through requesting individual meetings with any Party or witness as appropriate.^[19] Additionally, any Party may request a live meeting with the adjudicating HRO to take place before the determination is made.

The HRO determines whether a policy violation occurred using a preponderance of the evidence standard (i.e., is it more likely than not that the policy violation occurred). In making their determination, the HRO is in no way bound by the investigator's investigative report, which is advisory to the HRO. The HRO may accept or reject the investigator's recommended finding(s) or proposed findings of fact in whole or in part. The HRO will reach their own independent conclusions based on the evidence presented.

The HRO will prepare a written determination explaining the rationale behind the determination. The HRO will provide the Parties with notification of the determination, in writing (by electronic or other means), providing an appropriate level of detail consistent with applicable law, privacy practices, and the purposes of the Non-Discrimination Policy. If a policy violation is found, sanctions and remedial actions, as appropriate, will be assigned pursuant to Sections VII.D and VII.E below.

VI. Appeals

Appeals of dismissals and of HRO determinations regarding responsibility are permitted.^[20] Appeals of closures based on the HRO's evaluation (see Section D.III. above) are permitted but only in those matters where the Reporting Individual had specifically requested CRTIX to open an investigation. Appeal grounds are strictly limited to the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence has become available that could affect the outcome of the matter and that was not reasonably available at the time the determination regarding responsibility, the dismissal, or the closure after initial evaluation was made; and/or
- The CRTIX Coordinator (or designee), investigator, or decision-maker (HRO) had a disqualifying conflict of interest or bias for or against Reporting Individuals or Respondents generally, or the individual Reporting Individual or Respondent, that affected the outcome of the matter

Appeals must be submitted in writing to the CRTIX Coordinator within 5 business days^[21] of the applicable CRTIX action, must articulate one of the permissible bases for appeal, and must provide information or evidence to support the appealing Party's argument.

For matters involving student Respondents, appeals will be decided by the Vice President of Student Affairs (or designee). For matters involving staff Respondents, appeals will be decided by the Vice President of Human Resources (or designee). For matters involving faculty Respondents, appeals will be decided by the Vice President of Academic Affairs (or designee) of the appropriate academic program.

Regardless of which Party appeals, both Parties may participate in the appeals process. Once an appeal is submitted, Middlebury's CRTIX office, in addition to forwarding the appeal to the appropriate appellate decision-maker, will notify the other Party and invite their response to the appeal.^[22] The other Party will be given a period of 5 business days to submit a statement in support of the determination and/or in opposition to the appeal.^[23]

The appellate decision-maker may deny the appeal, or if one or more of the appeal grounds have been met, may:

- Return the case to CRTIX for action;
- return the case to the original HRO for reconsideration; or
- appoint an alternate HRO to review the case for potential re-adjudication (if the original outcome was materially altered by bias or conflict of interest on the part of the adjudicating HRO).

It is the responsibility of the appellate decision-maker to determine which aspects of the case merit a new review, and to direct the CRTIX office or HRO accordingly.

The appellate decision-maker will issue a written decision on the appeal, including a brief explanation of their reasoning, which will be provided simultaneously to both Parties. A denial by an appellate decision-maker is final. In the event the appeal is accepted and the matter is returned to CRTIX or an HRO for reconsideration, the subsequent CRTIX action or HRO determination is final.

VII. Outcomes

After an investigation is started, there are several possible outcomes.

A. Dismissal

1. CRTIX may, at any time, dismiss a complaint under investigation, in whole or as to a particular Respondent, if it has been determined that:
 - i. The complained of conduct is the responsibility of a person who cannot reasonably be identified;
 - ii. The Respondent is not participating in any Middlebury education program or activity and is not employed by Middlebury; or

iii. The Reporting Individual voluntarily withdraws any or all of the allegations in the complaint, CRTIX declines to initiate a complaint, and CRTIX determines that, without the Reporting Individual's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute a violation of the Non-Discrimination Policy even if established by a preponderance of the evidence.

2. CRTIX may elect to continue the investigation after dismissing the complaint as to a particular Respondent if:

i. There are one or more remaining named or identifiable Respondents whom the CRTIX Coordinator determines may potentially be responsible for the alleged conduct; or

ii. CRTIX determines that the complaint alleges a potential hostile environment based on a protected personal characteristic(s) even in the absence of an identifiable Respondent over which Middlebury retains disciplinary authority.

3. If a complaint is dismissed by Middlebury under the circumstances described above, Middlebury will simultaneously provide to the Parties written notice (by electronic or other means) of the dismissal and the reasons for the dismissal, and notice of the Parties' opportunity to appeal the dismissal through the appeal procedures outlined in Section V above.

An Informal Resolution (Adaptable Resolution) process may include an outcome agreement entered into between the Parties in which it is agreed upon that the charges from the written notice of allegation letter will be dismissed (including waiver of the Parties' right to appeal the dismissal). In such cases, the CRTIX Coordinator will dismiss the complaint, and appeal procedures will not be applicable.

B. Respondent Accepts Responsibility

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the adjudicating HRO is authorized to accept that admission, adopt it as their finding or determination, and implement sanctions. The Respondent has no right to appeal findings based on their acceptance of responsibility. If the Respondent admits to some but not to all conduct charged, the investigation and adjudication process continues to its conclusion with respect to the conduct not admitted to. The Reporting Individual retains their right to appeal a determination when a Respondent admits responsibility.

C. Finding of No Violation

If the adjudicating HRO determines that the investigation has produced insufficient evidence to find, by a preponderance of the evidence, that a violation of the Non-Discrimination Policy, or other relevant Middlebury policies, has occurred, the determination will be a finding of no policy violation. Under these circumstances, the full determination, or information obtained during the investigation, may still be shared with appropriate Middlebury officials to address concerns outside the scope of the Non-

Discrimination Policy that come to light in the course of the investigation. (In most circumstances, consistent with Middlebury's amnesty policy for Non-Discrimination Policy investigations, concerns related to student substance use or minor rules infractions uncovered during the investigation will not be referred to other Middlebury officials for disciplinary action.)

D. Respondents found Responsible

1. When the adjudicating HRO finds that the Respondent engaged in conduct that violates Middlebury policy, the CRTIX Coordinator will, in accordance with this Procedure, forward the case to the appropriate supervisory authority for the program at issue ("sanctioning authority"), who will assign a sanction or sanctions, and take other actions as appropriate. The sanctioning authority may collaborate with the adjudicating HRO in determining the appropriate sanction or sanctions.

In determining sanctions or other actions, the sanctioning authority will be guided by a number of considerations, including but not limited to the following:

- The severity, pervasiveness, and objective offensiveness of the behavior;
- The nature of the violation;
- The impact of the violation on the Reporting Individual;
- The impact or implications of the violation within the Middlebury community;
- Any prior misconduct by the Respondent, including the Respondent's relevant prior conduct history, at Middlebury or elsewhere;
- Whether the Respondent has accepted responsibility for the violation;
- The maintenance of a safe, nondiscriminatory and respectful environment conducive to living, learning, and working, as applicable; and
- Any other mitigating, aggravating, or compelling factors.

2. Sanctions and other actions will go into effect at either the expiration of the deadline for the submission of an appeal where no appeal is submitted, or at the conclusion of the appeal process if applicable.^[24] This language does not preclude the possibility of emergency action as needed in accordance with Section C.II.

3. Sanctions are assigned by the appropriate supervisory authority for the Respondent(s). When multiple supervisory authorities are involved in assigning sanctions, they may collaborate with each other as appropriate.

4. For students, the sanctioning authority is the Dean of Students, the Dean of the Language Schools, the VPAA of the Institute, the Dean of the Bread Loaf School of English, etc. (depending on the program the student is associated with).
5. For staff, the sanctioning authority is the appropriate Vice President (or designee) for the area or unit in which the staff member works.
6. If the adjudicating HRO finds that a faculty member has engaged in conduct that violates the Non-Discrimination Policy, or other Middlebury policies under investigation, if applicable (absent or following an appeal of that finding in accordance with this Procedure, if an appeal was granted), CRTIX will provide the case materials to the Provost. The Provost will initiate the appropriate procedures under the applicable Handbook policies and/or contracts. The Provost may also assign a designee—ordinarily the Vice President of Academic Affairs (VPAA)—to initiate the appropriate procedures under the applicable Handbook policies and/or contracts.
7. In any case in which a finding of a violation of the Non-Discrimination Policy has been issued, violation of a plan or directive to address the Prohibited Conduct or related sanction may be grounds for further discipline.

E. Recommendation of Steps to Ensure that Violations do not Continue or Recur

1. In any case where the adjudicating HRO determines that a violation of the Non-Discrimination Policy occurred that cannot be attributed solely to the actions of an identifiable Respondent, the adjudicating HRO will identify appropriate prompt and effective steps to ensure that violations of the Non-Discrimination Policy do not continue or recur within the Middlebury programs or activities reviewed during the investigation.
2. When the adjudicating HRO determines that remedial actions under this section must be implemented, the HRO will notify the Vice President(s) with oversight of the programs or activities reviewed during the investigation that a violation of the Non-Discrimination Policy has been found by providing a copy of the full determination prepared in accordance with Section D.IV, and will also provide a copy of the determination to the General Counsel and Chief Risk Officer.
3. The relevant Vice President(s) will identify relevant employees with knowledge and oversight of the program or activity at issue and direct that they promptly meet with the adjudicating HRO to discuss feasible steps to address the violation of the Non-Discrimination Policy found by the adjudicating HRO.
4. After consulting with the identified employees, the adjudicating HRO will provide the Vice President(s) with a list of remedial actions, which may include policy or practice changes and other steps designed to ensure that violations of the Non-Discrimination Policy do not continue or recur within the Middlebury programs or activities reviewed during the investigation. A copy of the remedial actions will also be provided to the General Counsel and Chief Risk Officer.

5. The recommended steps will include time frames for progress reporting on implementation that must be adhered to by the employees tasked with implementing the recommendations.

[1] In accordance with Federal law, allegations of sexual harassment (and related retaliation) falling under the scope of Title IX are addressed through Middlebury's [Title IX Investigations & Resolutions Procedure](#).

[2] Students at the undergraduate College will be held accountable in accordance the Scope of Oversight provision in section [II.B.2.a.iii.](#) of the Handbook. Students at the Middlebury Institute of International Studies will be held accountable in accordance with the Scope of Oversight provision in section [IV.B.2.b.B.](#) of the Handbook.

[3] The CRTIX Coordinator is ultimately responsible for coordinating Middlebury's compliance with applicable anti-discrimination laws and administering the Non-Discrimination Policy and this Procedure, but may choose to delegate specific duties, obligations and functions described in the Non-Discrimination Policy and this Procedure. Therefore, all references to the CRTIX Coordinator in the Non-Discrimination Policy and this Procedure should be read functionally as "CRTIX Coordinator or designee."

[4] Middlebury's HROs serve as the CRTIX Coordinator's designees for the purposes of overseeing investigations and adjudicating complaints under this Procedure.

[5] When an individual who otherwise would be a Confidential Resource receives information about Prohibited Conduct outside the context of their confidential provision of services to a patient or client, they are required to report such information to CRTIX.

[6] As one example, all individuals including Confidential Resources are typically obligated under state law to report instances of child abuse to the applicable state agency, or to make limited disclosures as necessary to address an imminent risk of physical harm to the reporting Party or another person. Exceptions to confidentiality are governed by the law of the state in which the Confidential Resource is located.

[7] In instances where a matter is being investigated, CRTIX will ordinarily offer supportive measures to the Respondent as well.

[8] The HRO's specific duties and functions described in subsection D.II. may be delegated or may fall to another HRO or another employee or agent of Middlebury as needed or as appropriate.

[9] For an investigation to be able to proceed, both factors must be met.

[10] In cases where there is not a specific Respondent named, CRTIX will ordinarily send written notice to the Middlebury official responsible for the area or unit in which the alleged violation of Policy

occurred.

[11] Ordinarily a HRO

[12] Ordinarily the supervising HRO will also be the adjudicating HRO (who will ultimately render a decision as to whether the Non-Discrimination Policy was violated).

[13] The investigator may need to initially review relevant evidence that may or may not be otherwise impermissible, in order to determine whether an exception applies that would permit its consideration in the investigation.

[14] Middlebury recognizes, however, that individuals who are bound by legal privileges may not be able to disclose privileged information, unless an exception applies. The investigator will not access, consider, disclose or otherwise use a Party's privileged records without the Party's voluntary, written consent to do so, and such information will not be deemed relevant to an investigation or adjudication absent the voluntary, written consent of the Party.

[15] Inculpatory evidence refers to evidence that tends to show a Respondent's responsibility for the alleged Prohibited Conduct, whereas exculpatory evidence refers to evidence that tends to clear a Respondent from responsibility for the alleged Prohibited Conduct.

[16] CRTIX may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request. The decision to grant this request is at the CRTIX Coordinator's sole discretion and will be granted equitably to all Parties.

[17] Unless unforeseen circumstances arise necessitating otherwise, a Middlebury HRO will be the decision-maker responsible for rendering an official determination on behalf of the institution as to whether there was a violation of the Non-Discrimination Policy.

[18] Or, in the case of a matter that does not involve a particular identifiable Respondent, whether there was otherwise a violation of the Non-Discrimination Policy.

[19] In the event of such meetings taking place, it is standard practice for the HRO to record the meeting. In addition, each Party may have an advisor present with them when attending any meetings with the adjudicating HRO.

[20] Appeals of dismissals following successful completion of an informal resolution process are excepted, as ordinarily in such matters there is an outcome agreement entered into between the Parties in which it is agreed upon that the charges from the written notice of investigation will be dismissed (including waiver of the Parties' right to appeal the dismissal).

[21] CRTIX or the appellate decision-maker may extend this deadline if warranted by the circumstances.

[22] In matters where a Reporting Individual appeals a closure after initial determination, however, CRTIX does not notify the Respondent.

[23] In matters where the HRO's Determination is being appealed, the adjudicating HRO will also ordinarily provide to the applicable appellate decision-maker a response to the appealing Party's appeal request.

[24] In matters where an appeal is not applicable, the sanction(s) and/or other actions(s) will go into effect immediately.