

## **Title IX Case Study: Nonconsensual Sexual Penetration**

**“Nonconsensual Sexual Penetration”** means any penetration of another’s body parts without the person’s consent. Including penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part. Additionally, contact between the mouth of one person and the genitals or anus of another person.

**Question One: Does a preponderance of the evidence support that Sexual Penetration between the Respondent and the Complainant occurred?**

**There must be evidence that the Respondent contacted the Complainant as follows:**

- Penetrating the Complainant’s:
  - genitalia
  - groin
  - breasts
  - buttocks
  - other body part
- Penetrating the Complainant with the Respondent’s:
  - penis
  - finger
  - tongue
  - an object
  - other intimate body part

**OR**

- Contact between the Respondent’s mouth and the Complainant’s genitals
- OR**
- Contact between the Respondent’s mouth and the Complainant’s anus

List any relevant evidence that supports that Sexual Penetration occurred:

List any relevant evidence that supports that Sexual Penetration did not occur:

IF YES → Proceed to Question Two

IF NO → Conclude that no violation occurred

**Question Two: Did the Complainant Consent?**

**Consent must be evidenced by:**

- words that, when evaluated from the perspective of what a *Reasonable Person* who perceived the words, communicated the Complainant's knowing and voluntary willingness to participate in the mutually agreed upon sexual activity.

**AND/OR**

- actions that, when evaluated from the perspective of what a *Reasonable Person* who perceived the actions, communicated the Complainant's knowing and voluntary willingness to participate in the mutually agreed upon sexual activity.

Note: Consent is absent when the activity in question exceeds the scope of consent previously give. Also, silence or the absence of resistance does not imply consent.

List any relevant evidence that supports that the Complainant Consented to the Sexual Penetration:

List any relevant evidence that supports that the Complainant did not Consent to the Sexual Penetration:

IF YES → Proceed to Question Three

IF NO → Conclude that a Policy violation occurred (\*But for the purposes of this exercise continue to Question Three)

**Question Three: Was Consent valid?**

**Consent is invalid if the Complainant:**

1. **Was Forced to participate in penetration**
  - Examples of Force include physical force, threats of harm, words or conduct that would cause the Complainant to feel fear, a threat to disclose personal information, other immediate harm.
2. **Was Incapacitated and the Respondent was (or RP would have been) aware of the Complainant's Incapacitation**
  - Incapacitation the physical and/or mental inability to make informed, rational judgments. Judged from the perspective of Reasonable Person.
  - Can result from: mental disability, sleep, involuntary physical restraint, intentional or unintentional taking of alcohol and/or other drugs.
3. **Was an improper age to Consent**
  - If the Complainant is under the age of 16 they cannot legally give consent under Georgia law
4. **Withdrew Consent and The Respondent failed to stop the act**
  - Consent can be withdrawn at any time by either party by using clear words or actions.

List any evidence relevant to determining if the Complainant was Forced to submit to the sexual contact:

List any evidence relevant to determining if the Complainant was Incapacitated:

If the Complainant was Incapacitated, list any evidence relevant to determining whether the Respondent was aware of the Complainant's Incapacitation:

List any evidence relevant to determining if the Complainant was of age to Consent:

List any evidence relevant to determining if the Complainant Withdrew Consent:

If the Complainant Withdrew Consent, list any evidence relevant to determining if the Respondent stopped all sexual contact with the Complainant:

IF YES → Conclude that no violation occurred

IF NO → Conclude that a Policy violation occurred