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Title IX in Action: Preparing School Leaders for Compliance

Sally Roller, Title IX Practice Lead
Sally Roller Law LLC

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Title IX in Action: Preparing School Leaders for Compliance

**Sally Roller, Esq.
Sally Roller Law LLC**

Meet the Presenter

- Conducts workplace and Title IX investigations
- Title IX Hearing Officer & Decision Maker
- Former litigator at the Colorado Attorney General's Office in the K-12 Education Unit
- Litigated in private practice
- B.A. in Secondary Education and History, minor in special education
- M.Ed. in Moderate Special Needs



A pair of ornate metal scales of justice, symbolizing law and equity. The scales are made of a dark, possibly bronze or steel, metal. The central pillar is decorated with intricate, circular patterns. Two pans are suspended from the pillar by chains. The pans are also decorated with patterns. The scales are set against a plain, light-colored background. The lighting is soft, creating subtle shadows on the surface below the scales.

Tip #1: Know the Law

Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)



Title IX Regulations

When Does Title IX Apply?

- School must have control over the harasser and the context of harassment
- **“Education program or activity” means . . .**
 - Locations, events, or circumstances under substantial control
 - Any building owned or controlled by an officially recognized student organization
- **Regulations specify “harassment . . . against a person in the United States”**
 - Off-campus/out-of-school conduct, study abroad programs, or school-sponsored international trips
- **At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.**



Tip #2: Know When Liability Arises

Gebser v. Lago Vista Indep. School Dist.

524 U.S. 274 (1998)

- The U.S. Supreme Court ruled individuals cannot recover monetary damages against the school unless:
 - Three-part standard:
 - 1. An official of the educational institution must have had “actual notice” of harassment;
 - 2. The official must have authority to “institute corrective measures” to resolve the harassment problem; AND
 - 3. The official must have “failed to adequately respond” to the harassment and, in failing to respond, must have acted with “deliberate indifference.”

Davis v. Monroe County Bd. Of Ed.

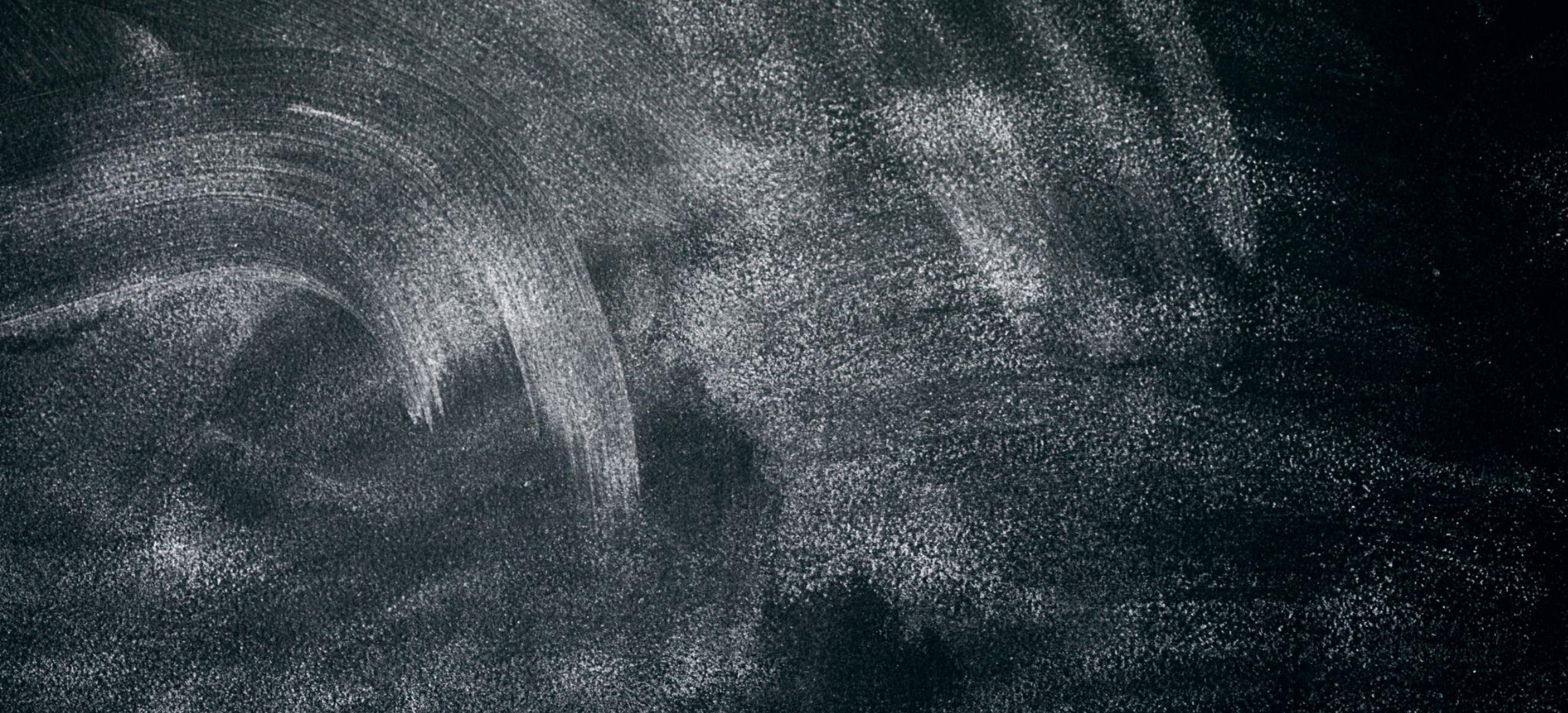
526 U.S. 629 (1999)

- **The U.S. Supreme Court expanded on the *Gebser* case:**
 - The institution must have **“actual notice”** of the harassment; and the institution must have responded to the harassment with **“deliberate indifference.”**
- **Additionally, court held:**
 - Harassment must be **“severe, pervasive, and objectively offensive,”** and the indifference **“systemic,”** to the extent that the victim is deprived of educational opportunities or services.
 - Framework added to determine deliberate indifference – stating that deliberate indifference constitutes a response that is **“clearly unreasonable in light of the known circumstances.”**

What does this mean for you?



- **Areas that may give rise to a claim of deliberate indifference:**
 - Failing to conduct an investigation
 - Includes deferring to law enforcement as the sole investigation
- **Conducting an inadequate**
- **Unreasonable delays during the investigation**
- **Failing to follow school/district policies and procedures**
- **Lack of documentation to indicate that an investigation was conducted**



Tip #3: Know The Definition of Sexual Harassment

Sexual Harassment

- **QUID PRO QUO:** An employee conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct.
- **SEXUAL HARASSMENT:** Unwelcome conduct determined by a reasonable person to be so severe *and* pervasive, *and* objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.
- **OTHER SEXUAL VIOLENCE:** "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under the Clery Act and the Violence Against Women Act.

Remember retaliation is also prohibited!



Severe

- Physical actions are more likely to be severe without the need for repetition
- Non-consensual sexual contact
- Accompanied by threats and violence

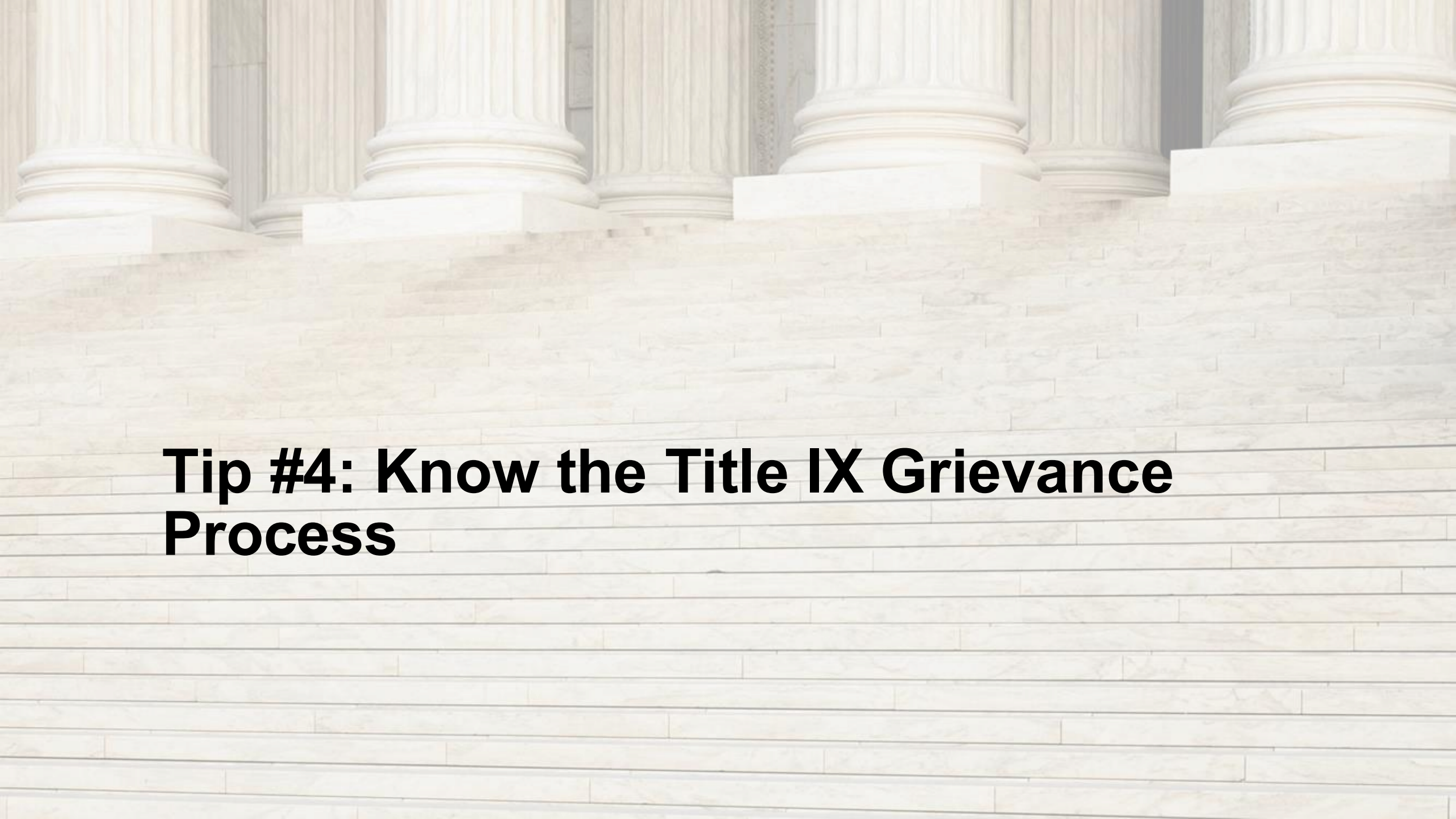
Pervasive

- Widespread
- Openly practiced
- Known to school community
- Frequency of conduct

Objectionably Offensive

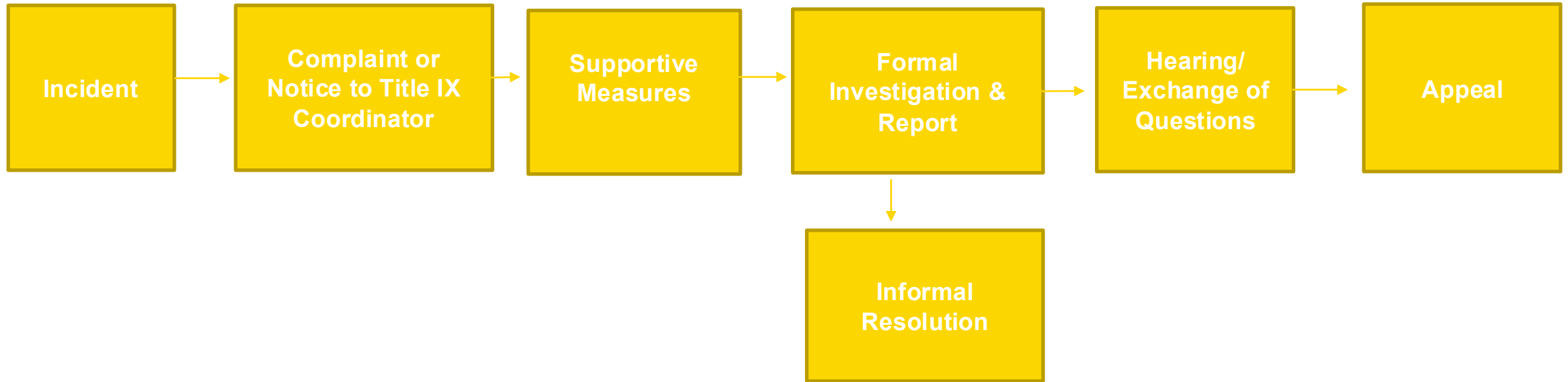
- Reasonable person standard
- Age difference and positions of power between complainant and respondent
- Aspects of humiliation, intimidation, ridicule

Remember, other school policies may be used to address similar conduct, even if it is not severe, pervasive, and objectionably offensive!



Tip #4: Know the Title IX Grievance Process

Grievance Process





Tip #5: Know How to Handle Criminal Involvement

Role of Law Enforcement and Issues of Concurrent Criminal Action

Criminal investigations do not relieve the school of its duty to respond promptly and efficiently

Not best practice for law enforcement to be the Title IX investigatory arm

Legal standards for criminal investigations differ from Title IX standards

Police investigations or reports may not be determinative of whether harassment occurred under Title IX

Delaying process for law enforcement

Document any delays

Tip #6: Identify Available Supportive Measures



Supportive Measures

- **Supportive measures are –**
 - non-disciplinary, non-punitive individualized services
 - offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent
 - before or after the filing of a formal complaint ***or where no formal complaint has been filed.***
- **Their purpose is to –**
 - restore or preserve equal access to the education program or activity
 - without unreasonably burdening the other party
- **They come into play immediately!**

Ask the student - what will help them feel safe at school?

Examples of Supportive Measures

- No contact orders and movement plans
- Modifications to class schedule
- Academic support
- Adjustments to transcripts
- Excused tardiness and absences
- Designated safe space / safe adult
- Free counseling
- Campus escort
- Removal of harasser from extracurricular activities
- Education to the community
- Permission to leave class with a signal

Be creative here!



**Tip #7: Know How to Make
Information Accessible to Families**

Make Information Accessible to Families

- **Adopt and publish necessary policies that are –**
 - Easy to find
 - Easy to understand
 - Easy to act on
- **Proactively remove barriers to reporting by –**
 - Recognizing and addressing barriers (language, cultural, etc.)
 - Making reporting available via multiple methods and outside of the school's operation hours
 - Encouraging families to inquire, even if they aren't sure what happened

A classroom setting with a large blackboard in the background. The blackboard has a wooden frame and is mounted on a light blue wall. In the foreground, there are several rows of light-colored wooden desks with orange plastic chairs. A teacher's desk is visible on the right side, featuring a yellow chair and a small white box with the text "LOREM IPSUM". The floor is covered in grey square tiles.

Tip #8: Enroll in Title IX Training

Title IX Training

Who Must be Trained:

- Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates informal resolution

Training Must Include:

- Title IX's definition of "sexual harassment"
- Scope of the school's education program or activity
- How to conduct an investigation and grievance process
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Decision-makers must receive training on the following:
 - Technology at live hearing
 - Issues of relevance of questions and evidence, including when questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant
 - The presumption that respondent is not responsible for the alleged conduct until a determination is made
- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence



Tip #9: Plan for a Successful Intake Meeting

Starting off on a Right Foot


Act promptly to schedule an intake meeting

- Schedule for an appropriate time and location

Plan on how to ensure the meeting space is safe and comfortable

At the initial intake meeting –

- Discuss the availability of supportive measures and ask what the complainant's wishes with respect to supportive measures are
- Inform the complainant of the availability of supportive measures **with or without** the filing of a formal complaint
- Explain to the complainant the process for filing a formal complaint
- Document the meeting in writing that is provided to the complainant



Remember to be upfront about the expected duration of the process and the school's limits to address the alleged harm!

Considerations for a Successful Intake Meeting



- **Schedule in advance**
 - Thought the meeting should be scheduled promptly, providing notice will help everyone feel prepared
- **Convenient time for everyone**
 - Not only a time that parents are able to attend, but also at a time when you don't feel rushed
- **Respectful of parents' rights/desire to be involved**
 - Inappropriate to pull a child out of class without notice to question them
- **Comfortable environment**
 - Quiet, distraction free
 - Age-appropriate objects that a child can hold or manipulate
 - Kleenex and water
- **Effective communication**
 - Active listening
 - Open ended questions
 - Clear and concise instructions
 - Vocabulary that the family understands

A group of nine diverse young children, including boys and girls of various ethnicities, are standing in a line and smiling. They are dressed in casual clothing like t-shirts, polo shirts, and jeans. The background is dark and out of focus.

Tip #10: Have Available Remedies



- Identify and implement interim remedies as necessary
- Identify and implement specifically tailored remedies as part of the final report
 - Disciplinary sanctions
 - Restorative justice measures
 - Training and counseling
- Continue offering supportive measures as appropriate *for the duration of enrollment*
- Ensure no retaliation is taking place
- Remember to check in with the complainant on what potential remedies are important to them!

A group of nine diverse young children, including boys and girls of various ethnicities, are standing in a line and smiling. They are dressed in casual clothing like t-shirts, polo shirts, and jeans. The background is dark and out of focus. The text "Tip #11: Know When Conflicts Arise" is overlaid in white, bold font across the middle of the image.

Tip #11: Know When Conflicts Arise

Internal v. External Investigator

- Uses school email
 - Access to internal systems
 - Knows physical layout of campus
 - Knows school slang/acronyms/traditions
 - Familiar with organizational placement/chart and potential power dynamics
- Uses external email
 - No access internal systems
 - May not know physical layout of campus
 - May not know slang/acronyms/traditions
 - Less familiarity with organizational placement and potential power dynamics

**BONUS TIP: Know
what NOT to do!**



What NOT to do

- Have your school principal conduct the investigation immediately upon hearing about the incident
- Discipline Respondent
- Forgetting to call the parents/guardians
- Have three administrators in a meeting with a student
- Failure to contact your Title IX Coordinator
- Accusatory/forceful tone
- Failure to contact the school's lawyer
- Failure to keep documentation of investigation





Questions?

Sally@sallyrollerlaw.com

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