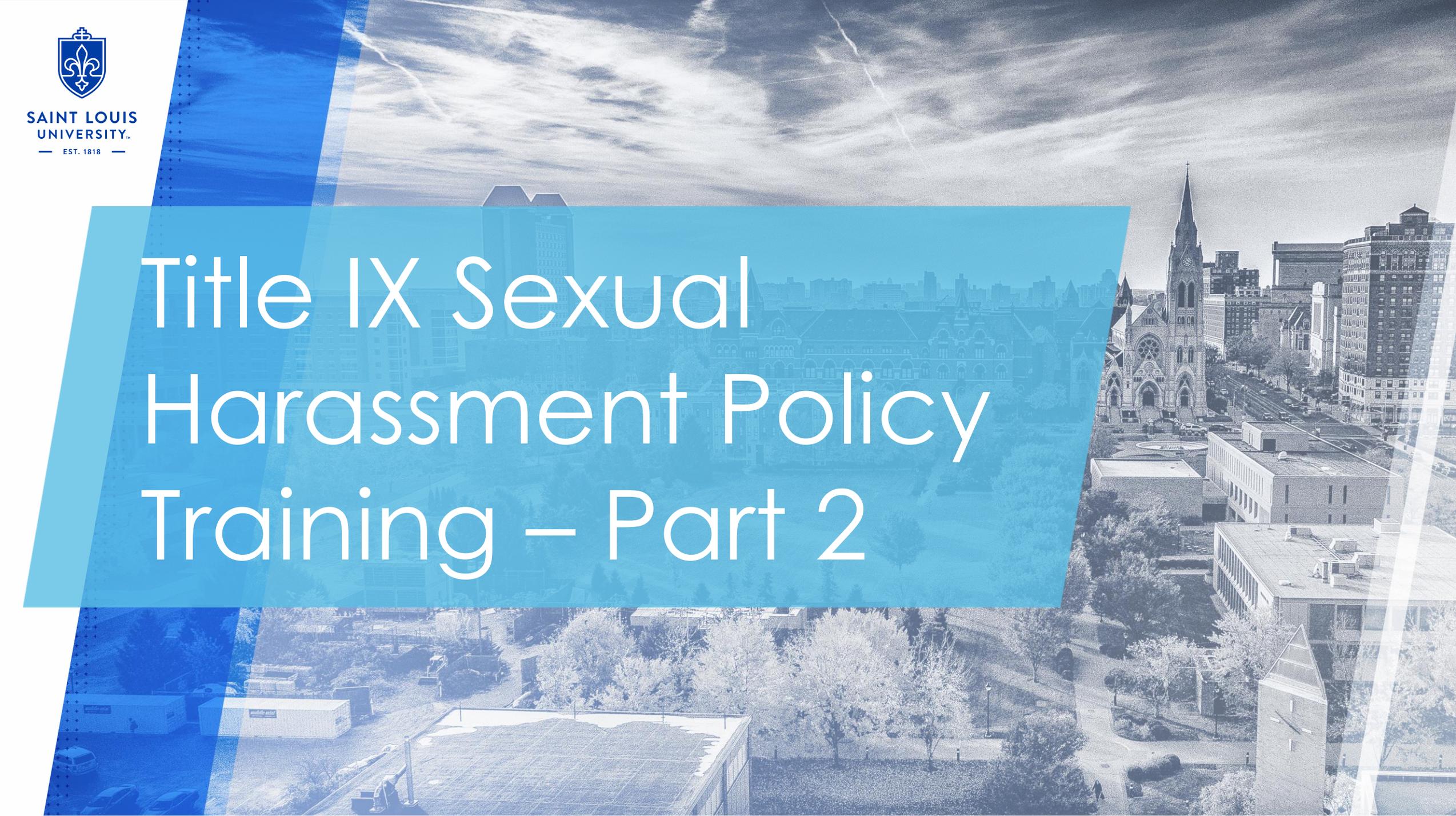




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Title IX Sexual Harassment Policy Training – Part 2



The Grievance Process



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Overarching Principles

- Both the Complainant and the Respondent will be treated equitably;
- There will be an objective evaluation of all evidence, both inculpatory and exculpatory, and a determination of credibility will not be made based on a person's status as a Complainant, Respondent, or witness;
- The Title IX Coordinator, Investigators, and adjudicators will be trained and free from any conflict of interest;
- The Respondent will be presumed not responsible throughout the Grievance Process unless a finding of responsibility is made at the conclusion of the Grievance Process.
- Each Party has the right to appeal a decision made by the hearing panel;



Overarching Principles

- Each Party will be provided the range of available support measures and these measures will remain an option for the Parties throughout the Grievance Process;
- Each Party will be provided a range of possible sanctions should the end of the Grievance Process result in a finding of responsibility;
- The university will adhere to reasonably prompt timeframes for the resolution of all Formal Complaints, but will allow for delays with good cause;
- Evidence of information that is protected by a legally recognized privilege, for example, conversations between a doctor and patient or attorney and client, will not be included in the Grievance Process without written consent from the Party holding the privilege;
- The preponderance of the evidence is the standard of evidence utilized throughout the entirety of the Grievance Process.



Formal Complaint



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Formal Complaint

- *First step* – Filing a Formal Complaint
- A Formal Complaint is a document filed and signed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against the Respondent and requesting that the university investigate the allegation of Prohibited Conduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an education program or activity at Saint Louis University. The Complainant cannot be anonymous and must sign their name on the Formal Complaint.



Formal Complaint

- If a Complainant chooses not to file a Formal Complaint, the Title IX Coordinator will assess the available information and whether to file a Formal Complaint.
 - Requires analysis of circumstances, and notice to the Complainant.



Formal Complaint

- Once a Formal Complaint is filed, the Title IX Coordinator will conduct an initial assessment to determine whether the allegations fall *within the scope of this policy*.
- Title IX Coordinator will evaluate whether the *mandatory* or *discretionary* dismissal requirements apply.
- Both Complainant and Respondent will receive notice if the Formal Complaint is dismissed.



Notice



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Notice

- If the Title IX Coordinator confirms that a Formal Complaint should proceed, Complainant and Respondent then receive notice in writing, including:
 - The allegations including the date, time, location, parties involved, and the conduct alleged to have occurred
 - The corresponding policy violations under this policy and/or other relevant university policy
 - An explanation of the Grievance Process and their rights under this policy
 - The presumption that the Respondent is not responsible for any policy violation prior to a finding of such at the conclusion of the Grievance Process

Notice

- Notice will also include:
 - The right to an advisor;
 - The use of the preponderance of the evidence standard;
 - The right to inspect all information and evidence collected during the Grievance Process;
 - A proposed date and time to meet with the investigator
 - The available supportive measures;
 - The range of possible sanctions should the end of the Grievance Process result in a finding of responsibility.



Advisor



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Right to an Advisor

- Throughout the process, a Complainant or Respondent may have an advisor provided by the university or an advisor of their choice present at any meeting or proceeding related to the investigation or Grievance Process.
- Party may decide not to use an advisor, except for the hearing



Right to an Advisor

- Advisor may be an attorney (but is not required to be)
- University provided advisors are trained on the grievance process
- The advisor may not be a fact witness or otherwise have any conflicting role in the process.



Role of an Advisor

- Advisors may participate in university processes in an advisory capacity, but they may not take part directly in the investigation, hearing, or appeal, *with the exception of conducting cross-examination during a hearing.*
- If a Party wishes to speak privately with their advisor during the investigation or hearing, they may request a brief recess from the meeting or proceeding.
- The university has the right to determine what constitutes appropriate behavior on the part of an advisor as discussed in the *Rules of Decorum.*



Role of an Advisor

- During the hearing, the hearing chair will enforce the Rules of Decorum – if a Party’s advisor violates the Rules of Decorum repeatedly, the hearing chair can decide to remove the advisor from the hearing
- Advisors may engage in cross examination of the other Party and witnesses, *but may only ask relevant questions*



Timeframe

- Grievance process should be completed within 90 calendar days
- May extend the time frame for good cause, and will communicate the delay and the reason for delay to the Parties
- Good cause may include: the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for university breaks or vacations, or to address other legitimate reasons.



Investigation



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Investigation

- Title IX Coordinator will assign a trained investigator to conduct a prompt, thorough and impartial investigation to conduct a fair and reliable fact-gathering based on the allegations in the Formal Complaint.
- It is the responsibility of the university, not the Parties, to gather relevant information, to the extent reasonably possible.
- **All Parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of university policy and can subject a Student or Employee to disciplinary action.**



Investigation

- The investigator will be responsible for:
 - interviewing the Complainant and the Respondent, interviewing potential witnesses;
 - collecting relevant documentation and physical evidence, including documents, communications between the Parties, and other electronic records as appropriate;
 - creating a timeline; and
 - preparing a written report documenting the complete investigation.



Investigation

- Both Complainant and Respondent have the equal opportunity to be heard, submit evidence, and identify witnesses.
- Witnesses must have observed the acts in question, have information relevant to the incident, or offer information that speaks to a Party's individual's character.
- No gag orders on the Parties.
- The investigator will send each Party and their advisor a written notice of investigative interviews, meetings, and proceedings.



Investigation – Privileged Records

- Investigator will *not* have access to privileged records *without consent* of the Party (including medical records, psychiatric or counseling records, communications with attorneys, or communications with clergy).
- If a Party chooses to share such information, it will become a part of the investigation and be available to the other Party.



Investigation – the Report

- Investigator will prepare a report that:
 - Summarizes the information gathered during the investigation,
 - Identifies potential policy violations, and
 - synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts



Investigation – the Report – Chance to Review

- Parties have 10 days to review the report and evidence before it is finalized, and may submit additional comments or information to the investigator.
- The finalized report, including appropriate comments submitted by either Party, will be given to the hearing panel.



Hearing



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Hearing

- Title IX Coordinator will appoint a hearing panel of three trained individuals, *who are equal decision-makers*
- Minimum two of three panelists must decide that it is more likely than not that the Respondent is responsible in order for a finding of responsible to be made
- Title IX Coordinator will appoint one panelist to serve as the hearing chair



Hearing Chair

- Hearing Chair:
 - Chooses a date for the hearing and provides written notice to the Parties
 - Inquires about Parties' advisors for the hearing
 - Creates an audio/audiovisual recording of the hearing
 - Ensures the hearing occurs in a timely fashion



Hearing Chair

- Hearing Chair:
 - Conducts the hearing proceedings
 - Answers questions about the *Rules of Decorum*
 - Upholds the *Rules of Decorum* and decides when to remove an individuals for violating the Rules



Rules of Decorum

- Requires all participants to conduct themselves in an appropriate and respectful manner
- Advisors and panelists may not ask repetitive or argumentative questions
- Participants may not raise their voices or yell and may not interrupt others when speaking



Hypothetical

- Complainant's advisor continues to ask the same questions, even after a determination by the hearing chair that the questions are not relevant.



Hearing Chair

- Hearing Chair:
 - Provides preliminary decisions on relevancy of topics for the hearing, and *makes final relevancy determinations* for questions asked at the hearing
 - Provides *explanations* during the hearing if questions are excluded based on relevance
 - Summarizes the hearing panel's decision in a written document



Hearing

- Hearings conducted using video-conferencing technology
- Hearing chair makes opening remarks, including the identity of the Parties and their advisors, what university policy violation(s) are alleged to have occurred, the application of the preponderance of the evidence standard, and a review of the expectations outlined in the Rules of Decorum.
- Parties have the opportunity to make opening statements (Advisors may not make opening statements, only Parties)

Hearing – Complainant's testimony

- Complainant invited to *answer relevant questions from the hearing panel*
- After the panel's questions are completed, the Respondent's advisor may engage in cross examination of the Complainant
- *The hearing chair will determine if each question from the advisor is relevant before the Complainant answers*
- If the Respondent and their advisor does not appear at the hearing, the university will provide an advisor to conduct the cross examination of the Complainant.



Hearing – Respondent's testimony

- Respondent invited to *answer relevant questions from the hearing panel*
- After the panel's questions are completed, the Complainant's advisor may engage in cross examination of the Respondent
- *The hearing chair will determine if each question from the advisor is relevant before the Respondent answers*



Hearing

- After the Parties have been questioned, the hearing chair will call each witness included in the investigative report
- *Each witness will be questioned by the hearing panel, and then by each Party's advisor (alternating which Party questions first)*
- *Hearing chair will determine if each question from the advisors is relevant before the witness answers*



Hearing

- If a Party or witness does not attend the hearing and submit to cross examination, *the hearing panel must not rely on any statement made by that Party or witness in reaching a determination regarding responsibility.*
- The hearing panel is also not permitted to draw an inference about the determination regarding responsibility *based solely* on the absence of a Party or witness from the hearing or their refusal to answer questions from the hearing panel or during cross examination.



Hearing

- Each Party will have the opportunity to make a closing statement (Advisors may not make closing statements, only Parties)
- A closing statement may include a summary of the information shared during the hearing and the impact the Party believes it has on the decision before the hearing panel.
- It may also include how the Party has been impacted by the allegations and what their desired outcome of the hearing is.



Relevance Determinations



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Relevance

- Relevant questions are those that call for information that will assist the members of the hearing panel in deciding whether the allegation(s) and information in the investigation is either **more or less likely to be true**.
- A question cannot be excluded on the basis of relevance solely because it calls for prejudicial evidence or evidence of character.



Hypothetical

- Respondent's advisor begins asking questions about what a Complainant was wearing the night of an alleged assault – is this relevant?



Relevance

- Questions concerning the Complainant's sexual history are not relevant unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.



Written Determination



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Written Determination of Responsibility

- The written decision will include the following:
 - Identification of each allegation and the corresponding policy violation;
 - An explanation of the procedural steps taken through the entirety of the Grievance Process;
 - A determination regarding responsibility for each alleged policy violation;
 - *Findings of fact made by the hearing panel that led to their decision*, conclusions about whether the alleged conduct occurred, and a rationale for the finding for each alleged policy violation;
 - Any disciplinary sanctions imposed on the Respondent;
 - Any remedies will be provided to the Complainant;
 - An explanation of each Party's right to appeal and the appeal process.



Sanctions



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Sanctions

- Sanctions for a violation of this policy by a student may include: expulsion; suspension; disciplinary probation; mandated counseling assessment which may include anger management course(s), alcohol and/or drug education program(s), and other requirements based upon the counseling assessment; restrictions on campus privileges including restrictions on campus housing or participation in student activities; community service; and/or other educational sanctions.
- Sanctions for a violation of this policy by an employee may include: leave with pay, leave without pay, termination, change in job responsibilities or duties, relocation of assignment, mandated counseling or anger management assessment, mandated training, such as sexual harassment training.



Appeals



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Appeals

- Either Party may appeal the decision of the hearing panel, or of a dismissal by the Title IX Coordinator
- Appeals are due within 3 days of the decision being appealed
- Title IX Coordinator will appoint an appeal panel of three individuals



Appeals

- The grounds for appeal may only be one or more of the following:
 - There was a material deviation from the procedures set forth in this policy or applicable provisions of the Student Handbook that would significantly impact the outcome of the case or may have resulted in a different finding;
 - New or relevant information, not available at the time of the investigation or hearing, has arisen that would significantly impact the outcome of the case;
 - The Title IX Coordinator, investigator, or member of the Hearing Panel had a conflict of interest or bias that affected the outcome of the case.

- Dissatisfaction with the outcome of the investigation, and failure of a Party or witness to attend or participate in the investigation or hearing process, are not grounds for appeal.

Appeals

- The non-appealing Party will have the opportunity to review the appeal and will have 3 days to submit a response.
- Appeals are not intended to be a full rehearing of the report and are generally limited to a review of the written documentation and pertinent documentation for the appeal.
- Absent extraordinary circumstances, the appeal panel does not meet with either Party.
- The decision of the appeal panel is final and should generally be completed within 15 business days.



Questions?



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Thank you for attending.

For questions or follow up, please
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