January 21, 2010

Charles W. Steger, Ph.D.
President
Virginia Polytechnic Institute & State University
222 Burruss Hall
Blacksburg, VA 24061

Certified Mail
Return Receipt Requested
7005 1160 0001 1518 7476

RE: Program Review Report
OPE ID: 00375400
PRCN: 200810326735

Dear President Steger:

On September 4, 2007, the U.S. Department of Education (the Department) announced that it was conducting a program review of Virginia Polytechnic Institute & State University's (Virginia Tech; the University) administration of the programs authorized pursuant to Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §§ 1070 et seq. (Title IV, HEA programs). Specifically, the letter stated that the program review was focused on Virginia Tech's compliance with the "Timely Warning" provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The findings of that review are presented in the enclosed report.

Findings of noncompliance are referenced to the applicable statutes and regulations and specify the action required to comply with the statutes and regulations. Please review the report and respond to each finding, indicating the corrective actions taken by Virginia Tech. The University's response must be submitted to the attention of Mr. James Moore in accordance with the instructions in the "Required Actions" section of this program review report.

Please be sure that your response conforms to the Department's standards for the protection of Personally Identifiable Information (PII) being submitted to the Department. PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, and date and place of birth).

PII being submitted electronically or on media (e.g., CD-ROM, floppy disk, DVD) must be encrypted. The data must be submitted in a .zip file encrypted with Advanced Encryption Standard (AES) encryption (256-bit is preferred). The Department uses WinZip. However, files created with

other encryption software are also acceptable, provided that they are compatible with WinZip and are encrypted with AES encryption.

The Department must receive an access password to view the encrypted information. The password must be e-mailed separately from the encrypted data. The password must be 12 characters in length and use three of the following: upper case letter, lower case letter, number, special character. A manifest must be included with the e-mail that lists the types of files being sent (a copy of the manifest must be retained by the sender).

Hard copy files and media containing PII must be:

- sent via a shipping method that can be tracked with signature required upon delivery
- double packaged in packaging that is approved by the shipping agent (FedEx, DHL, UPS, USPS)
- labeled with both the "To" and "From" addresses on both the inner and outer packages
- identified by a manifest included in the inner package that lists the types of files in the shipment (a copy of the manifest must be retained by the sender).

PII data cannot be sent via fax.

Program records relating to the period covered by the program review must be retained until the later of: resolution of the violations, weakness, and other issues cited or questioned in the program review; or the end of the retention period otherwise applicable to the record under 34 C.F.R. § 668.24(e).

Thank you for your continued cooperation and patience throughout the program review process. Please refer to the above Program Review Control Number (PRCN) in all correspondence relating to this report. If you have any questions concerning this report, please contact Mr. James Moore on (215) 656-6495 or at james.moore@ed.gov.

Sincerely,

Nancy Paula Gifford
Area Case Director

cc: Col. Wendell R. Flinchum, Chief of Police, Virginia Tech
Barry W. Simmons, Ph.D., Director, University Scholarships & Financial Aid, Virginia Tech

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Prepared for

Virginia Polytechnic Institute & State University

OPE ID: 00375400
PRCN: 200810326735

Prepared by:
U.S. Department of Education
Federal Student Aid
School Participation Team - Philadelphia

Program Review Report

January 21, 2010

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A. The University

Virginia Polytechnic Institute & State University
222 Burruss Hall
Blacksburg, VA 24061

Type: Public

Highest Level of Offering: Master/Doctorate Degrees

Accrediting Agency: Southern Association of Colleges and Schools

Student Enrollment: 30,000 (Approx. 2007/2008 Academic Year)

% of Students Receiving Title IV, HEA funds: 37% (Approx. 2007/2008 Award Year)

Title IV Participation, Per U.S. Department of Education Data Base (Postsecondary Education Participants System):

2007/2008 Award Year	
Federal Direct Loan Program	$ 86,120,333
Federal Pell Grant Program	$ 7,632,535
Federal Perkins Loan Program	$ 2,301,947
Federal Supplemental Education Opportunity Grant Program	$ 860,965
Federal Work-Study Program	$ 962,143

Default Rate – Direct Loan: 2006 – 0.9 %
2005 – 1.1 %
2004 – 1.2 %

Default Rate Perkins: As of: 6/30/07 – 8.3%
6/30/06 – 7.8%
6/30/05 – 3.7%

The Commonwealth of Virginia established Virginia Polytechnic Institute and State University as a public land-grant institution in 1872. Located in Blacksburg, VA, the main campus includes its own airport and more than 130 buildings situated on 2,600 acres. Currently, more than 30,000 students are enrolled at the University. The Virginia Tech Police Department (VTPD) employed approximately 40 sworn officers and 20 support staff during the review period. Virginia Tech owns property in every county in the state. The VTPD patrols buildings and property owned or controlled by the University throughout Blacksburg and Montgomery County.

B. Scope of Review

The U.S. Department of Education (the Department) conducted an off-site focused program review of Virginia Polytechnic Institute & State University's (Virginia Tech, the University) compliance with certain provisions of The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act.) The Clery Act requires all institutions that receive Title IV funding to disclose crime statistics and disseminate information about campus safety policies, procedures, and programs to members of the campus community. The Clery Act also requires institutions to notify students and employees of reported crimes and current threats on an ongoing basis by maintaining a crime log and issuing timely warnings.

Please note that this review was limited to an examination of Virginia Tech's compliance with the "Timely Warning" provisions of the Clery Act with special attention to the events of April 16, 2007. The operative statutes and regulations are as follows: §485(f)(3) of the Higher Education Act of 1965, as amended (HEA) and 34 C.F.R. § 668.46 (e) set out the standards that institutions must follow regarding the issuance of timely warnings and 34 C.F.R. § 668.46 (b)(2)(i) requires the inclusion of an accurate and complete statement of policy regarding the issuance of timely warnings in the campus security report.

On April 16, 2007, [redacted], a Virginia Tech student, murdered 32 members of the Virginia Tech campus community and seriously injured others in two separate attacks. On June 18, 2007, Virginia Governor Timothy Kaine appointed a review panel to investigate the events of that day and make recommendations for improvements to the relevant laws, policies, procedures, and systems. As the agency charged with enforcing the Clery Act, the U.S. Department of Education closely followed these events. The Governor's report, as amended, was also reviewed by the Department and is referenced in this report. On August 20, 2007, Security on Campus, Inc. (SOC), a non-profit organization concerned with campus safety, filed a complaint alleging that Virginia Tech violated the "Timely Warning" provisions of the Clery Act by not issuing specific campus-wide alerts once senior officials knew of the immediate threats to health and safety. The complaint also alleged that the University's timely warning policy, as published in its campus security reports (CSR) and distributed to students and employees, did not accurately explain Virginia Tech's actual procedures and protocols. On September 4, 2007, the Department issued a letter to Virginia Tech advising the University of the complaint and announcing the focused program review. Virginia Tech submitted its initial response to the Department's letter on October 7, 2007.

The review included a careful and thorough examination of all materials submitted by Virginia Tech, Security on Campus, Inc. and the affected families. Supplemental information was submitted throughout the program review process. The last set of materials submitted by the affected families was provided for our review on December 4, 2009. Examples of documents collected and examined during the review process include police reports, investigative reports, campus maps, photographs, timelines, e-mail exchanges, financial records, and other relevant materials. The team also reviewed the

reports prepared by the Review Panel appointed by Governor Kaine,[1] [hereafter "Review Panel Report"] and the records archive created as part of the settlement between the University and victim's families. The documents archive is available on-line at: http://www.prevailarchive.org/archive/

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning Virginia Tech's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve Virginia Tech of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs.

C. Findings and Requirements

During the review, serious findings of noncompliance were noted. Findings of noncompliance are referenced to the applicable statutes and regulations and specify the actions to be taken by Virginia Tech to bring campus policing and security operations into compliance with the Clery Act statutes and regulations.

Finding: Failure to Comply with Timely Warning Issuance and Policy Provisions

Citation:

Under the Clery Act institutions must issue timely warnings to the campus community to inform affected persons of crimes considered to be a threat to students and employees. See §485(f)(3) of the HEA. These warnings must be issued to the campus community in any case where an incident of crime listed in 34 C.F.R. § 668.46 (c)(1) or (c)(3) that represents a threat to students or employees is reported to a campus security authority. *34 C.F.R. § 668.46 (e).* In addition, institutions are required to include a number of detailed policy statements in the annual campus security report. *34 C.F.R. § 668.46 (b)(2).* The policy statements must include the institution's policy for making timely warnings and clear notice of the procedures that students and other must follow to report crimes and other emergencies that occur on campus. *34 C.F.R. § 668.46 (b)(2)(i).*

Noncompliance:

Virginia Tech failed to issue adequate warnings in a timely manner in response to the tragic events of April 16, 2007. There are two aspects to this violation. First, the warnings that were issued by the University were not prepared or disseminated in a manner to give clear and timely notice of the threat to the health and safety of campus

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[1] Mass Shootings at Virginia Tech April 16, 2007 Report of the Review Panel Presented to Governor Kaine, Commonwealth of Virginia, August 2007. An Addendum to the Report was issued in November 2009. The Addendum was revised again in December 2009.
http://www.governor.virginia.gov/TempContent/techPanelReport-docs/FullReport.pdf

community members. Secondly, Virginia Tech did not follow its own policy for the issuance of timely warnings as published in its annual campus security reports.

A. Timeliness Violation

On April 16, 2007, Virginia Tech officials issued an e-mail notice about the threat to the campus community at 9:26 am. However, as documented in the Review Panel Report and confirmed by our own examination, Virginia Tech officials had information available to them that required a timely warning to the University community much earlier than 9:26 A.M. For this reason, the Department has concluded that the timely warning requirement was not met.[2] Virginia Tech's building access logs show that the first two murders occurred in Virginia Tech's West Ambler Johnston (WAJ) Hall student residence at approximately 7:15 A.M. Sometime before 7:30 A.M., Virginia Tech Police Department (VTPD) and emergency medical services personnel arrived at WAJ. The VTPD Police Chief was advised of these murders before 7:45 A.M. The Chief immediately notified the Blacksburg Police Department (BPD). The BPD immediately dispatched a detective and evidence technician to the scene. The University's Executive Vice President was notified of the murders at 7:57 A.M, by which time word of the killings had already reached two other high-ranking University officials (at approximately 7:30 A.M.).

By 8:05 A.M., additional BPD officers were en route to WAJ. The record clearly shows that BPD and VTPD continued their on-campus investigation on a high alert footing from the time of the earliest reports. The VTPD and BPD mobilized emergency response and special weapons teams and deployed officers throughout the campus and the surrounding areas. Two of those officers were school resource officers (SROs) assigned to public schools in Blacksburg. The public schools immediately began taking steps to keep their students and employees safe as a result of the radio traffic that led to the SROs redeployment to WAJ.

By 8:10 A.M., the University President was notified of the murders at WAJ. In official statements by University officials and documents released as part of the settlement between Virginia Tech and the victim's families, the VTPD Chief stated specifically that he told Virginia Tech's President that a weapon was not found at the scene of the murders and that there were bloody footprints leading away from the bodies.

These facts strongly indicated that the shooter was still at large, and therefore, posed an ongoing threat to the health and safety of Virginia Tech's students and employees and other members of the campus community. Moreover, it is now clear that the "person of interest," often cited as a diversionary factor affecting the investigation and a delaying factor in terms of issuing timely warnings, was not identified and questioned until at least 46 minutes later than originally reported.

Virginia Tech did not send its first warning message to students and employees until 9:26 A.M., nearly two hours after campus security authorities, including senior University

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[2] Mass Shootings at Virginia Tech April 16, 2007 Report of the Review Panel Presented to Governor Kaine, Commonwealth of Virginia , Chapter III p 24-29, http://www.governor.virginia.gov/TempContent/techPanelReport-docs/FullReport.pdf

officials, were notified of the first two killings. By that time, thousands of students, employees and other members of the University community had continued to travel toward the campus from off-campus locations. Students living on-campus and employees who had already reported to work continued to move about the campus without any notice of the murders in WAJ.

As noted in the Review Panel Report, Virginia Tech's first message to students and employees only stated that a "shooting incident occurred." Although the message did urge community members to be "cautious" and to contact the police if they "observe anything suspicious," the warning did not mention two murders. As noted by the Governor's Review Panel, the lack of specificity in the message could have led readers to construe the message innocuously as merely announcing an accidental shooting. Indeed, Virginia Tech's own documents show that an earlier draft of the message did contain additional information including the statement, "one student is dead" and "another is injured and being treated" but these details were not included in the final version.

University and public records, including the e-mail traffic of Virginia Tech employees, also demonstrate that even before the release of the 9:26 A.M. message to the campus community, University officials were taking steps to provide for their own safety and that of their staff members and to inform family members that they were safe. Shortly after 8 A.M., the entrance to the Office of Continuing and Professional Education (OCPE) was locked after a family member notified an OCPE employee of the WAJ shootings. Records also show that the office suite occupied by the University Policy Group (the President, Vice Presidents, and other senior officials) members was locked down by 8:52 A.M., signaling that the University's senior officials believed that the crisis continued to pose an immediate and serious ongoing threat. Bank deposits were suspended at least one hour before the first warning was sent. Additionally, trash collection on campus was suspended at least a half-hour before the initial warning. Furthermore, the Co-Director of Environmental Health and Safety Services (EHSS) sent a message at 9:25 A.M. to her family titled, "I'm safe," and stated, "There is an active shooter on campus and it's making the national news. My office is in lockdown. This is horrible. I'll let you know when it's over." EHSS was one of the principal offices charged with issuing timely warnings.

The mass e-mail sent at 9:26 A.M. lacked the required specificity to give students and employees actual notice of the threat and to provide them with information they needed for their own protection. It is likely that the warning would have reached more students and employees and may have saved lives if it had been sent before 9:05 A.M. classes began. The University also chose not to use the four components of its new siren system that were operational on April 16, 2007. The University also did not use its notification protocol of last resort because of a lack of timely information. This system relied on resident advisors in residence halls and on floor wardens in certain older buildings to verbally warn individuals at risk. However, the resident advisors and floor wardens charged with notifying their fellow residents, classmates, and co-workers were not advised of the threat in enough time to spread the word.

Based on all information available at this time, we agree with the conclusion of the Review Panel[3] that the University cannot reasonably explain or justify the two hours that elapsed between the time University officials learned of the first two homicides and the issuance of the first vague warning.

B. Policy Violations

During the events of April 16, 2007, Virginia Tech did not comply with its own policy on the issuance of timely warnings as published in its campus security reports. The University policy that was in place on April 16, 2007 was vague and did not provide students and employees with actual notice of the types of events that would warrant a timely warning or explain how those warnings would be transmitted. As noted previously, the Clery Act requires institutions to develop, implement, publish, and distribute an accurate and complete timely warning policy. This policy disclosure is a required element of the CSR that must be distributed annually to students and employees. Virginia Tech's entire timely warning policy statement appeared under the heading, "Virginia Tech Police." The policy as it appeared in the CSR in place on April 16, 2007 stated:

> "At times it may be necessary for **"timely warnings"** to be issued to the university community. If a crime(s) occur and notification is necessary to warn the university of a potentially dangerous situation then the Virginia Tech Police Department should be notified. The police department will then prepare a release and the information will be disseminated to all students, faculty, and staff and to the local community."

Our review has shown that the University's actual process for issuing a timely warning was more complicated than the CSR suggests and was not well understood even by senior University officials. Contrary to the University's stated policy, the VTPD did not prepare or disseminate any of the warnings or messages that were sent to the campus community on April 16, 2007. At approximately 8:25 A.M., the University Policy Group (UPG) met and discussed the unfolding events. It is our understanding that no Virginia Tech Police officials served on the UPG and no police official was part of the UPG's initial deliberations about emergency notification. At 9:00 A.M, the UPG was briefed by the VTPD and at 9:25 A.M. a VTPD captain was brought into the UPG's meeting as a police liaison. During these meetings, the UPG discussed the warning that would be issued to the campus community, but the police department was not actively involved in those discussions.

Virginia Tech's operational policy statement at the time gave the VTPD the authority to issue a warning. In practice, however, the VTPD's Chief was required to consult with the UPG before a warning was issued. Moreover, access to the technological means to send such communications was under the exclusive control of the Associate V.P. for University Relations and the Director of News and Information who had the required

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[3] Mass Shootings at Virginia Tech April 16, 2007 Report of the Review Panel Presented to Governor Kaine, Commonwealth of Virginia, page 82, http://www.governor.virginia.gov/TempContent/techPanelReport-docs/FullReport.pdf

codes. None of these additional procedures were disclosed to Virginia Tech's students and employees in the CSR. Virginia Tech's actual policies and practices were not designed to ensure that students and employees received the information they needed on a timely basis.

Therefore, the Department has determined that Virginia Tech did not accurately describe its timely warning procedures to its students and employees. The Department has also determined that the institution's timely warning procedures in place on April 16, 2007 were not sufficient to issue warnings in a timely manner to its campus community.

Our review also indicates that the inconsistency between Virginia Tech's stated timely warning policy and the actual process caused further confusion among the University's students and employees, investigators, and the families and friends of the victims in the aftermath of the tragedy. The review team acquired a copy of Virginia Tech's Emergency Response Plan (ERP). According to the ERP, the responsibility to "issue communications and warnings" was actually delegated to the Emergency Response Resource Group (ERRG), which included members of the VTPD and Environmental Health and Safety Services. However, the ERRG did not clearly delineate the division of authority and duties between the ERRG and the UPG, which was to "provide centralized direction and control."

In an email dated August 17, 2007, President Steger's representative to the Review Panel, a former high-ranking University official, related his understanding of the policy in response to an inquiry from the Panel's staff about the University's timely warning policy and actual practice:

> "The authorization to send a message would have come from the Policy Group as provided by the Emergency Response Plan. The message would have actually been sent out by University Relations (see page 6-7 of the plan) and Larry Hincker is the Assoc. VP for Univ. Relations. He and Mark Owczarski, Director of News & Information (reports to Larry) have the codes that are needed to send out a message via the university's telephone system and control the process for sending out email messages to the campus community. On April 16, [VTPD] Chief Flinchum would have needed to go through the Policy Group to get a message sent out."

This explanation of Virginia Tech's policy does not mention the existence or role of the ERRG. However, it does confirm that, contrary to the timely warning policy disclosed by Virginia Tech to its students and employees, the VTPD did not have the authority to actually develop or issue timely warnings. Therefore, the Department finds that the timely warning policy in place on April 16, 2007 was not sufficient to enable a successful timely warning to its campus community and that the policy that was published was not followed.

Virginia Tech's failure to issue timely warnings of the serious and on-going threat on April 16, 2007 deprived its students and employees of vital, time-sensitive information and denied them the opportunity to take adequate steps to provide for their own safety. In addition, Virginia Tech's failure to develop and implement an adequate and appropriate timely warning policy and to even adhere to its own published policies effectively nullifies the intent of this disclosure requirement. Accordingly, Virginia Tech violated the Clery Act and the Department's regulations.

D. Required Actions

The Department understands that Virginia Tech has taken a number of actions to improve its timely warning system since April 2007. Virginia Tech must provide a corrective actions report that describes the steps it has implemented and its continuing efforts to establish and implement comprehensive timely warning policies and procedures. If the institution has any information to counter the facts presented in this report it must provide that information in its response to the Department. Your response must explain how the reforms, implemented or proposed, will address the weaknesses noted to ensure that the violation does not recur. As part of its response, the University is also encouraged to elaborate on any recent policing and campus safety initiatives of which it would like the Department to be aware including any new special emphasis on student alert protocols such as the Virginia Tech Alerts system and crisis intervention programs.

Virginia Tech must appoint an institutional official with sufficient knowledge and authority to conduct the review, prepare the response, and serve as a point of contact for the review team. The designated official must review all policing and campus security policies and procedures that are relevant to Clery Act compliance with specific attention to the issuance of timely warnings and methods of delivery.

In its response, Virginia Tech should specifically address the following questions:

- What was the University's stated policies and procedures regarding the issuance of timely warnings as of April 16, 2007?
- What was actually done on April 16, 2007, notwithstanding the written policies or procedures?
- What University officials or employees were responsible for carrying out the various functions required by the relevant policies and procedures and who was responsible for supervising those functions? (Please identify individuals by position and not name)
- Why did the violations and weaknesses identified in this Report occur?
- What, if any, policy or procedural changes have been or will be implemented to address the findings and weaknesses? Please also address the timing of any such changes.
- How were/will these changes be monitored and by whom?

- What organizational changes, such as staffing, budgetary issues, training programs or reporting relationships, are needed to implement any necessary changes?

Please provide copies of any documents or records referred to in your response that were not already provided to the Department. Please submit your materials within 60 days of the date of this program review report to:

Mr. James L. Moore, III
Senior Institutional Review Specialist
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 511
Philadelphia, PA 19107

Adequate responses must be given for each part of the finding identified in this program review report as well as any additional violations or internal control weaknesses identified during the formulation of the University's response. All aspects of the response must be detailed and state with particularity all violations and weaknesses as well as the changes, proposed or already implemented, needed to bring the University into compliance. Please provide copies of any documents or records referred to in your response. Please also provide copies of any timely warnings that were issued by the University during 2007, 2008, and 2009 with a note explaining to whom it was directed (student or employee group/building/University-wide, etc.) and the method of delivery. If the University identifies incidents that should have resulted in a timely warning but did not, please detail the specifics in your response.

These requirements have three primary purposes: 1) to provide additional information to address and resolve the violations documented in this program review report; 2) to ensure the accuracy and completeness of the timely warning and emergency notification policies that will be published in the University's future campus security reports; and, 3) to facilitate the development of corrective actions and improvements that will allow Virginia Tech to comply with all Clery Act provisions going forward.

Questions and requests for recommendations and technical assistance should be directed to the review team. Virginia Tech may wish to review the Department's Handbook for Campus Crime Reporting during the preparation of its response. The handbook is available online at www.ed.gov/admins/lead/safety/handbook.pdf.

Based on an evaluation of all available information including Virginia Tech's response, the Department will determine appropriate additional actions and advise the University accordingly in the Final Program Review Determination letter.