MAR 29 2011

Dr. Charles W. Steger, President
Virginia Polytechnic Institute
and State University
222 Burruss Hall
Blacksburg, VA 24061-2000

Sent by E-mail and
Overnight Via UPS
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Dear Dr. Steger:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Virginia Polytechnic Institute and State University (Virginia Tech) $55,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, (HEA), 20 U.S.C. § 1070 et seq. (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to $27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on Virginia Tech's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f) and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). In addition, institutions must submit crime statistics annually to the Department for the three most recent calendar years concerning the occurrence on campus, in or on non-campus buildings or property, and on public property of certain crimes reported to local police agencies or to a campus security authority. 34 C.F.R. § 668.41(e)(5); 34 C.F.R. § 668.46(c). The ASR must include the statistics submitted to the Department and contain a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b).

The Clery Act and the Department's regulations also require an institution to provide a timely warning to the campus community on certain crimes that are reported to campus security authorities or local police agencies and are considered by the institution to represent a threat to students and employees. § 485(f)(3) of the HEA, 20 U.S.C. § 1092(f)(3); 34 C.F.R. § 668.46(e). The institution must also disclose its policies for making timely warnings to the campus community as part of the ASR. 34 C.F.R. § 668.46(b)(2).

During the morning of April 16, 2007, Seung Hui Cho, a student at Virginia Tech, shot Emily Hilscher in her dorm room at West Ambler Johnston (WAJ) residence hall. He then shot Ryan Christopher Clark, a Resident Advisor, in Ms. Hilscher's room. Both Ms. Hilscher and Mr. Clark were Virginia Tech students and both died from the wounds caused by the shootings. Although the Virginia Tech Policy Group met to plan how to notify the campus community of the dormitory shootings, it did not issue any notification until more than two hours after the shootings occurred. About 15 minutes after the Policy Group issued a notice of the shootings at WAJ to the campus community, Cho began shooting students and Virginia Tech staff in Norris Hall, a classroom building on the Virginia Tech campus. Ultimately, Cho murdered 32 people, wounded many more, and then took his own life.

On April 19, 2007, Virginia Governor Tim Kaine commissioned a panel of experts to conduct an independent, thorough, and objective review of the tragedy and to make recommendations on improvements to the Commonwealth's laws, policies, procedures, systems, and institutions, as well as those of other governmental entities and private organizations. In August 2007, the Governor's Review Panel presented its report to Governor Kaine. An addendum to the report was issued in November 2009, and the report was revised in December 2009 (hereafter "Review Panel Report").[1]

The Department conducted an off-site campus security program review of Virginia Tech's actions on April 16, 2007 to examine Virginia Tech's compliance with the Clery Act's timely warning provisions. The review took place during the period of October 10, 2007 to December 4, 2009 and included reviewing records from Virginia Tech as well as information submitted by Security on Campus and the families of some of the victims of the shootings. On January 21, 2010, the Department issued a Program Review Report to Virginia Tech. Virginia Tech submitted its official response to the Program Review Report to the Department on April 20, 2010. The Department issued its Final Program Review Determination (FPRD) letter to Virginia Tech on December 9, 2010. The FPRD is incorporated by reference into this notice and is included as Enclosure 1 to this letter.

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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, http://www.governor.virginia.gov/TempContent/techPanelReport-docs/FullReport.pdf.

The Department is taking this fine action based on the findings in the FPRD, which concluded that Virginia Tech: (1) failed to provide a timely warning in response to the shootings and murders that occurred on April 16, 2007; and (2) did not comply with the timely warning policy it had disclosed to students and staff as part of the ASR. Based on these violations of the Clery Act and the Department's regulations, the imposition of a fine is warranted. 34 C.F.R. § 668.84(a).

FAILURE TO PROVIDE TIMELY WARNING

Under 34 C.F.R. § 668.46(e), all institutions participating in the Title IV, HEA programs must, in a manner that is timely and will aid in the prevention of similar crimes, provide a timely warning to the campus if certain crimes are reported to campus security authorities and are considered to represent a threat to students and employees. These crimes include the following: (1) criminal homicide (murder and manslaughter); (2) sex offenses (forcible and non-forcible); (3) robbery; (4) aggravated assault; (5) burglary; (6) motor vehicle theft; (7) arson; (8) liquor law, drug law and illegal weapons possession violations; and (9) hate crimes. The only exception to this requirement is if the crime is reported to a pastoral or professional counselor. 34 C.F.R. § 668.46(e)(2).

Virginia Tech failed to comply with the requirements of 34 C.F.R. § 668.46(e). Specifically, Virginia Tech failed to issue a timely warning to the campus community after the first two shootings occurred at the WAJ campus residence hall.

On April 16, 2007, at about 7:15am, Cho shot Ms. Hilscher and Mr. Clark in the WAJ residence hall on Virginia Tech's campus. The first Virginia Tech police officers arrived on the scene at 7:24am. The police notified Virginia Tech's Office of the Executive Vice President of the shootings at 7:57am. By 8:11am, Virginia Tech's President Steger had been notified of the events at WAJ. In a phone call, Chief Flinchum of the Virginia Tech Police Department (VTPD) informed President Steger that one student was in critical condition, one was fatally wounded, and the incident appeared to be domestic in nature. The police chief also reported to President Steger that no weapon had been found and that bloody footprints were found, leading away from the crime scene. President Steger decided to convene the Virginia Tech Policy Group. At 8:25am, the Policy Group convened to discuss the shootings and how to notify the campus community. The Policy Group issued an email to the campus community informing them of the shootings at WAJ at 9:26am.

The facts that the assailant had not been identified, a weapon had not been found at the scene and that bloody footprints led away from the bodies strongly indicated that the shooter was still at large, and posed an ongoing threat to the safety of students, staff and others on the Virginia Tech campus. Because Virginia Tech failed to notify its students and staff of the initial shootings on a timely basis, thousands continued to travel on campus, without a warning of the events at WAJ.

According to the Review Panel Report, while the Policy Group was discussing the shootings and considering what notice to provide, other institutions and individuals who

had information regarding the shootings were taking action. At about 8:00am, the Virginia Tech Office of Continuing and Professional Education (OCPE) locked down on its own after a family member notified an OCPE employee of the WAJ shootings. At 8:15am, two senior officials at Virginia Tech had conversations with family members in which they related the events at WAJ. In one conversation the official advised her son, a student at Virginia Tech, to go to class. In the other, the official arranged for extended babysitting. At 8:25am, police cancelled bank deposit pickups. At 8:40am, a Policy Group member notified the Governor's office of the double shooting. At 8:45am, a Policy Group member e-mailed a Richmond colleague that one student had been killed and another student critically wounded and stated "gunman on the loose." At 8:52am, Blacksburg public schools locked down until more information became available about the incident. Also at about 8:52am, the Executive Director of Government Relations at Virginia Tech, with an office adjacent to the President's suite, directed that the doors to his office be locked. Sometime between 9:00 and 9:15am, the Virginia Tech Veterinary College locked down. At 9:05am, trash pickup on campus was cancelled. Review Panel Report at 27-29, 87-C.

At 9:26am, Virginia Tech first notified the campus community of the shootings at WAJ. The message was vague and only notified the community there had been a shooting on campus. It did not mention that there had been a murder or that the killer had not been identified. The notice did not direct the community to take any safety measures. The message was not a timely warning as required by the HEA and the regulations.

According to the report of the Governor's Review Panel:

> [T]hose who had 9:05am classes were already in them and would not have seen the message unless checking their computers, phones, or Blackberries in class. If the message had gone out earlier, between 8:00 and 8:30am, more people would have received it before leaving for their 9:05am classes. If an audible alert had been sounded, even more might have tuned in to check for an emergency message.
>
> Few anywhere on campus seemed to have acted on the initial warning messages; no classes were canceled, and there was no unusual absenteeism. When the Norris Hall shooting started, few connected it to the first message.

Review Panel Report at 82.

Between approximately 9:40am and 9:51am, the gunman shot 47 additional victims in Norris Hall before taking his own life. A second message was sent to the Virginia Tech community at 9:50am with a much more explicit warning. This message was not only sent to email and cell phones but was also broadcast on campus loudspeakers. At 10:17am, approximately 26 minutes after the shootings at Norris Hall ended, a third message was sent to the community cancelling classes and advising everyone to remain in place.

As discussed above, when individuals and organizations received information about the events at WAJ, they were able to make their own decisions on how to react and on whether or not to take steps to protect themselves. Had an appropriate timely warning been sent earlier to the campus community, more individuals could have acted on the information and made decisions about their own safety.

It is essential that institutions provide timely warnings to students and employees with the most accurate and complete information available at the time to best ensure the safety and well being of the campus community. As the Department has previously stated, a timely warning "should be issued as soon as the pertinent information is available because the intent of a timely warning is to alert the campus community of continuing threats . . . thereby enabling community members to protect themselves." See The Handbook for Campus Crime Reporting (2005) at 61-62. In this case, the potential of a serious threat existed after the initial shootings, and an appropriate warning should have been disseminated to the campus community. Therefore, the Department has determined that Virginia Tech failed to comply with the timely warning provisions of the Clery Act because it failed to act reasonably in waiting two hours and fifteen minutes to issue a notice of any kind to the campus community.

In responding to the Program Review Report, Virginia Tech contended that the Department was improperly applying requirements that institutions establish emergency response and evacuation procedures, which were added to the HEA by the Higher Education Opportunity Act (HEOA) in 2008. The Department has implemented these requirements in 34 CFR § 668.46(g) (2010). Those requirements include a detailed description of the policies and "the procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on campus." 34 CFR § 668.46(g)(1) (2010). The Department wishes to underscore that the additional requirements imposed by the HEOA in 2008 and the regulatory changes requiring immediate notification are a direct result of the tragedy at Virginia Tech. Since these regulations became effective, institutions are required to provide immediate notice in response to situations such as the events currently under review. The Department believes this is a positive change in the law increasing the safety of students and campus community members.

The Department does not contend that Virginia Tech's policies in 2007 had to meet these requirements; nor does the Department express an opinion on whether Virginia Tech's current policies meet these requirements. Instead, the Department has determined that Virginia Tech's policies in 2007 and its actions on April 16, 2007 did not meet the statutory and regulatory requirements for *timely warnings* as of that date.

It is important to note that while Virginia Tech has put in place various measures and taken steps to strengthen its timely warning procedures and processes subsequent to the April 2007 tragedy, Virginia Tech failed to have the required measures and procedures in place on April 16, 2007.

I have assessed $27,500 for Virginia Tech's failure to provide a timely warning. This serious violation warrants the maximum statutory fine of $27,500.

FAILURE TO FOLLOW TIMELY WARNING POLICY

The Department's regulations require that all institutions participating in the Title IV, HEA programs must prepare an ASR that contains the information listed in 34 C.F.R. § 668.46. One of the requirements is that the ASR must include a statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning the response to those reports. In particular, the institution's ASR must include its policies for making timely warning reports to members of the campus community regarding crimes, including homicide, as listed in 34 C.F.R. § 668.46(b)(2)(i).

The Clery Act requires that institutions' policies and procedures related to campus security be published in the ASR and include policies for issuing timely warnings. The timely warning policy should include meaningful information that provides notice to the campus community on what circumstances would lead to issuance of a timely warning, who will issue the timely warning, and, in general, what mode of communication will be used to disseminate the warnings. Virginia Tech included a timely warning policy in its ASR, but the policy statement did not include sufficient information and failed to reflect the institution's actual practices or policies.

Virginia Tech's published timely warning policy, as of April 2007, failed to provide critical information on crimes that represented a threat to the campus community. The ASR policy stated that, in circumstances requiring a timely warning, the police department would prepare a release with information that would be disseminated to the campus community. The ASR, however, failed to disclose the role of Virginia Tech's University Relations office in preparation and issuance of timely warning notices. The role of the University Relations office in production of warning notices was only contained in Virginia Tech Internal Policy #5615, dated May 7, 2002. Internal Policy #5615 is an internal policy and procedures document that was not provided to the campus community and that was not consistent with the policy disclosed in the ASR. In fact, the University Relations office was central to dissemination of timely warning notices because the VTPD did not have the computer code necessary to send out those warnings. In addition, on April 16, 2007, the Policy Group made the decision on issuance of a warning. The Policy Group, however, failed to include a representative of the VTPD as articulated in the ASR. Moreover, neither the ASR nor Internal Policy #5615 mentioned the role of the Policy Group in determining the timing of and information for warnings.

It is essential that the campus community be informed on how they will receive timely warnings of potentially dangerous situations. The timely warning policy included in Virginia Tech Internal Policy #5615 was not the policy that had been communicated to the campus community and included in Virginia Tech's ASR in effect in April 2007. Virginia Tech's failure to include this information in the ASR is problematic because the disclosure of the actual procedures would have given the campus community notice that

there was an additional layer of officials involved in disseminating a timely warning. Accordingly, the Department has concluded that, in violation of the Clery Act, Virginia Tech failed to provide sufficient information in the ASR on its timely warning policies and failed to follow the policies described in the ASR.

In determining the amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision In the Matter of B'nai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for Virginia Tech is the 2008-09 award year. According to Department records, Virginia Tech received approximately $8,993,612 in Federal Pell Grant funds; approximately $108,064,732 in Federal Family Education Loan (FFEL) and Federal Direct Loan (FDL) funds ($4,500 FFEL and $108,060,232 FDL); and approximately $2,971,036 in Campus-Based funds. The latest information available to the Department indicates that the median funding level in the 2008-09 award year for institutions participating in the Federal Pell Grant program is $1,111,434; for institutions participating in the FFEL and/or the Federal Direct Loan program, the median funding level is $2,971,547; and for institutions participating in the Campus-Based programs, the median funding level is $274,347. Accordingly, the Department considers Virginia Tech a large institution because its overall funding level exceeds the median funding levels.

As detailed in this letter, the Clery Act violations identified at Virginia Tech are very serious. The Department's FPRD notes that several offices on the Virginia Tech campus took steps in response to learning of the shootings before the administration issued the warning. The failure to follow its own policy resulted in a delay in providing the warning and left other offices and individuals without critical information that would have allowed them to make decisions and to take precautions for their safety and the security of others.

While Virginia Tech's violations warrant a fine far in excess of what is currently permissible under the statute, the Department's fine authority is limited. The HEA authorizes the Department to impose a maximum fine of $27,500 per violation. As a result, the Department is assessing the maximum statutory fine of $55,000.

The total fine of $55,000 will be imposed on April 29, 2011, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Virginia Tech may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If Virginia Tech chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

Upon receipt of a request for hearing, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of Virginia Tech's case to a hearing official, who will conduct an independent hearing. Virginia Tech is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If Virginia Tech does not request a hearing but submits written material instead, I will consider that material and notify Virginia Tech of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT VIRGINIA TECH SUBMITS MUST BE RECEIVED BY APRIL 29, 2011; OTHERWISE, THE $55,000 FINE WILL BE EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of Virginia Tech's rights with respect to this action, please contact Bonnie Gibbons of my staff at 202/377-4284.

Sincerely,

Mary E. Gust

Mary E. Gust
Director
Administrative Actions and Appeals Service Group

Enclosure