



December 9, 2010

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

Overnight Mail
Tracking Number
1Z A54 67Y 01 9799 5015

RE: Final Program Review Determination (FPRD)
OPE ID: 00375400
PRCN: 200810326735

Dear Dr. Steger:

The U.S. Department of Education's (Department's) School Participation Team - Philadelphia issued a program review report on January 21, 2010 regarding Virginia Polytechnic Institute & State University's (Virginia Tech's; the University's) administration of 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). This program review focused on Virginia Tech's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). Virginia Tech's final response was received on April 21, 2010. The Final Program Determination Letter (FPRD) is enclosed. Copies of the program review report, the Revised Timeline of Events contained in the Governor's Review Panel Report, and Virginia Tech's response are also enclosed. Any supporting documentation submitted with Virginia Tech's response is being retained by the Department and is available for inspection by Virginia Tech upon request. Additionally, this FPRD, related attachments, and any supporting documentation are public documents and may be provided to other oversight entities after the FPRD is issued.

Purpose:

A final determination has been made concerning the outstanding findings of the program review report and is detailed in the attached FPRD. The purpose of this letter is to: 1) advise the University of the Department's final determination and 2) to notify Virginia Tech of a possible adverse administrative action. Due to the serious nature of the violations identified during the program review, we have referred this FPRD to the Department's Administrative Actions and Appeals Division (AAAD) for its consideration of a possible adverse administrative action pursuant to 34 C.F.R. § 668, Subpart G. Such action may include a fine, and/or the limitation,

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suspension or termination of the Title IV eligibility of the University. If AAAD initiates an action, Virginia Tech will be notified under separate cover of that action. AAAD's notification will also include information regarding the University's appeal rights and procedures on how to contest that action.

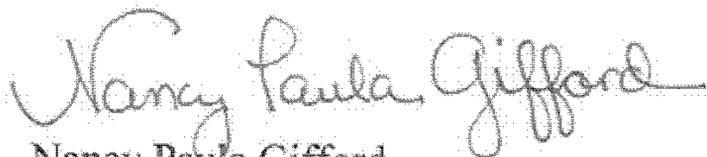
A copy of this FPRD and its attachments will be posted to the Department's Data Center website at www.federalstudentaid.ed.gov/datacenter/clervact.html for the public to review and download.

Record Retention:

Program records relating to the period covered by this program review must be retained until the later of: resolution of the violations, weakness, and other issues identified during the program review as delineated at 34 C.F.R. § 668.24 (e)(3)(i); or the end of the retention period applicable to Title IV-related records under 34 C.F.R. § 668.24 (e)(1) and (e)(2).

The Department expresses its appreciation for the courtesy and cooperation extended throughout the program review process. If you have any questions regarding this letter, please contact Mr. Clifton Knight on (202) 377-4244 or myself on (215) 656-6442.

Sincerely,



Nancy Paula Gifford
Area Case Director

Enclosures:

Final Program Review Determination
Institution's Response to the Program Review Report
Revised Timeline of Events in the Governor's Review Panel Report
Program Review Report

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



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GO FURTHER
FEDERAL STUDENT AID

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

**Final Program Review Determination
December 9, 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

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

Perkins Default Rate: 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 more than 130 buildings situated on 2,600 acres. Currently, more than 30,000 students are enrolled at the University. At full strength, 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), §485(f) of the Higher Education Act of 1965 as amended (HEA), 20 USC §1092(f). The Clery Act requires all institutions that participate in any of the federal student financial aid programs authorized by Title IV of the HEA 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.

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 shootings that occurred on Virginia Tech's campus in Blacksburg, Virginia on April 16, 2007. Section 485(f)(3) of the HEA and 34 C.F.R. § 668.46 (e) establish the requirement for timely warnings and 34 C.F.R. § 668.46 (b)(2)(i) requires an institution to provide an accurate and complete statement of its policy regarding the issuance of timely warnings in the annual 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 those events and to make recommendations for improvements to the relevant laws, policies, procedures, and systems. The Governor's report, as amended, was also reviewed by the Department and is referenced in this report.

As the agency charged with enforcing the Clery Act, the U.S. Department of Education closely followed these events and decided to open an off-site program review. The Department issued a September 4, 2007 letter to Virginia Tech announcing the focused program review. The Department also received a complaint from Security on Campus, Inc. (SOC), a non-profit organization concerned with campus safety, alleging that Virginia Tech violated the "Timely Warning" requirements of the Clery Act on April 16, 2007, by not issuing specific campus-wide alerts once senior officials knew of the immediate threat to health and safety. The complaint also alleged that the University's timely warning policy, as published in its annual campus security reports (CSR) and distributed to students and employees, did not accurately explain Virginia Tech's actual procedures and protocols for issuing timely warnings. This information was also shared with Virginia Tech in our September 4 letter.

Virginia Tech submitted its initial response to the Department's letter on October 7, 2007. The Department issued its program review report on January 21, 2010 (Attachment B). The University submitted its official response on April 21, 2010, following a 30-day extension (Attachment C).

The review included a careful and thorough examination of all materials submitted by Virginia Tech, Security on Campus, Inc., and representatives of the victims and their families. On May 18, 2010, Virginia Tech made the Program Review Report and the institution's response available to the public. After reviewing the material made public by Virginia Tech, SOC sent the Department an additional statement regarding the allegations in their initial complaint. This document stated the reasons that SOC believed that the findings in the program review report should be sustained. The statement also addressed what SOC characterized as factual errors and inaccuracies in Virginia Tech's response to the Program Review Report.

Family members of the victims also submitted materials for consideration during our review. These records included their personal notes from meetings with Virginia Tech officials, personal impact statements, photographs, and e-mail communications with Virginia Tech officials and one another. Family members also submitted copies of Virginia Tech documents and publications, financial records, and other materials that they wanted the review team to consider. The family members submitted information to the program review team throughout the program review process; the last set of materials was provided on December 4, 2009. The review team also collected and examined a variety of records during the review process including police reports, investigative reports, campus maps, photographs, timelines, e-mail exchanges, financial records, and other relevant materials. The team also reviewed the report prepared by the Review Panel appointed by Governor Kaine,¹ [hereafter "Review Panel Report"].

For purposes of this report, we are generally relying on the revised timeline of events contained in the Review Panel Report. (hereinafter referred to as the Timeline of Events and included as Attachment A to this report).² If the time of an event mentioned in this report is different from the Timeline of Events, then the source is noted.

We have completed our analysis and are issuing this Final Program Review Determination letter. The Department has analyzed the University's Response to the findings in the Program Review Report and responds to Virginia Tech's points in this letter.

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 Report was revised again in December 2009.
<http://www.governor.virginia.gov/TempContent/techPanelReport-docs/FullReport.pdf>

² We acknowledge that questions have been raised about the details of certain events included in the Review Panel Report. This report reflects our conclusions on the timeframes and details of the events based on the evidence and documents we received and reviewed. We do not express any opinion on matters outside those discussed in this Final Program Review Determination.

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 Final Determinations

The purpose of this letter is to: (1) advise the University of the Secretary's final determinations regarding the findings in the January 21, 2010 program review report; (2) provide feedback on the corrective actions outlined in the response; (3) notify the University of our referral to the Administrative Action and Appeals Division; and, 4) close the program review.

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; 34 C.F.R. §668.46(e). 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). The policy statements must include a statement of 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 comply with the requirements relating to a timely warning in the HEA and the Department's regulations in response to the shootings on campus on 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 community members. Second, 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

The Review Panel Report reflects the following sequence of events that are relevant to the timely warning issue: on April 16, 2007, at about 7:15 a.m., [REDACTED] shot two

Virginia Tech students in the WAJ residence hall on Virginia Tech's campus; the first Virginia Tech police officers arrived at the scene at 7:24 a.m.; the police notified the school's Office of the Executive Vice President at 7:57 a.m.; Virginia Tech's Policy Group convened to discuss the shooting and how to notify students at 8:25 a.m.; finally, at 9:26 am, Virginia Tech issued an e-mail to campus staff, faculty and students informing them of the shooting. As documented in the Review Panel Report and confirmed by our own examination of the evidence we received, Virginia Tech did not issue the warning in a timely manner in light of the information that it had and the circumstances that remained unknown that morning. For this reason, the Department has concluded that Virginia Tech violated the timely warning requirements because it did not act reasonably to comply with the Clery Act.

In the introduction to its' response to the Program Review Report (dated April 20, 2010) (hereinafter "University's response") Virginia Tech states that it disagrees with the findings and conclusions of the Program Review Report and maintains that it complied with the Clery Act during the events on April 16, 2007.

In its response, Virginia Tech relies in part on a report from Delores A. Stafford, the former Chief of Police at George Washington University, who it employed to review the Program Review Report and the University's response. Ms. Stafford stated her opinion that Virginia Tech did not violate the timely warning requirement in place on April 16, 2007, and that the institution should not be held accountable for meeting standards that did not exist at the time. Ms. Stafford also reported on the response to a survey she conducted of her "colleagues in the campus law enforcement industry" regarding institutional response times to situations that might require a timely warning. The University's response states "The findings of the survey indicate that in 2006, 75 percent of the respondents issued timely warning 12-48 hours following an incident."

We have considered Ms. Stafford's opinion and the results of the survey she conducted, but we give them little weight. First, Ms. Stafford is not and has not been an official responsible for enforcement of the Clery Act, and she cannot provide an official interpretation of the Act or the Department's regulations. Moreover, her letter to the University does not state the basis of her opinion that the University's actions to not inform its students and faculty in a timely manner is consistent with the Clery Act. Finally, we do not believe that a survey conducted of individuals regarding the practices that they believe the institutions they worked at followed three years before is entitled to any weight when determining the proper application of federal law, particularly when the

law in question is intended to benefit students and others in the campus community and not the individuals responding to the survey.³

In addition, Ms. Stafford's opinion appears to be inconsistent with Virginia Tech's own policy on timely warnings as of April 2007. The Review Panel Report notes that Virginia Tech's campus security policy document, "Campus Safety: A Shared Responsibility" (formulated as part of Virginia Tech's compliance with the Clery Act), says:

At times it may be necessary for 'timely warnings' to be issued to the university community. If a crime(s) occur [sic] and notification is necessary to warn the University of a potential [sic] 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.

Review Panel Report at page 87-C. This policy statement indicates Virginia Tech's understanding (as of April 2007) that a timely warning is intended to warn students and others of a potentially dangerous situation in a time frame that allows them to take steps to protect themselves. The policy statement does not fit Ms. Stafford's description of a timely warning as just an after-the-fact notice of a crime.

In its response to the Program Review Report, Virginia Tech responded separately to a number of statements in the Report. In the following part of this letter we have listed the particular statements mentioned in Virginia Tech's response, the institution's response and our comments in reply.

1. Statement in Report: An active shooter loose on campus is not a typical incident. The Clery Act and the Department's regulations, 34 C.F.R. 668.46(e), require that an institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes of criminal homicide, murder and nonnegligent, manslaughter, etc. The goal of preventing of similar crimes is not achieved if the campus community is not warned in a timely manner.

University's Response – Virginia Tech maintains that in the early morning on April 16, 2007, there was nothing to indicate that an ongoing threat faced the campus, and that the Department's conclusion is a post-event reaction and that the appropriate inquiry should be based solely on how the facts appeared prior to the shooting that occurred later that day. Virginia Tech claims that a review that is not limited to the facts that appeared prior to the Norris Hall shootings can be seen as reflecting hindsight bias. Virginia Tech believes that the Department's Program Review Report conclusion that its warning at 9:26 am was not timely or adequate is based on knowledge now that a threat existed on April 16, 2007. In addition, Virginia Tech asserts that the Clery Act provides for the

³ We also note that Virginia Tech significantly overstates the results of that survey. The survey asked a hypothetical question about the timeline typically used by institutions to issue timely warnings to the community. It does not inquire about particular incident(s) that would warrant a timely warning, and specifically, it does not inquire about a case involving an active shooter on campus.

exercise of an institution's discretion and judgment in issuing a warning and implicitly encourages consultation with law enforcement authorities. The institution notes that the Secretary of Education has previously stated that a definition of "timely reports" is not necessary and warranted, and that timely reporting must be decided on a case-by-case basis. The institution's response also refers to various publications about timely warnings and emergency notifications, and purports that the Department confused the

distinction between timely warning and emergency notifications in analyzing the events following the shooting at Virginia Tech's West Ambler Johnston Hall (WAJ). Virginia Tech contends that it met the legal requirements by issuing a timely warning within two hours and fifteen minutes after the shooting in WAJ, thereby exceeding the timeframe standard that the institution believes was expected of institutions in 2007. (See Virginia Tech's response at Attachment C, pages 2-5)

DOE's Comments-The Department disagrees with Virginia Tech's claim that there was no evidence of an ongoing threat to the campus community during the morning of April 16, 2007. The Review Panel Report notes that when the University's Policy Group was convened, the University knew that there had been a double shooting with both student victims critically wounded, the shooter was unknown and at large and the initial police impression was that it was probably a domestic issue. Review Panel Report, p. 87-B. The fact that an unknown shooter might be loose on campus made the situation an ongoing threat at that time, and it remained a threat until the shooter was apprehended.

We acknowledge that campus officials should generally consult with law enforcement officials in issuing a timely warning. In the case of Virginia Tech, the Review Panel Report notes that the police did not have the capability of issuing a warning themselves and were actively involved in investigating the first shootings but gave the university administration the information on the crimes and left it to the Policy Group to handle the public announcements. Review Panel Report, p. 87. Law enforcement authorities were at the scene of the crime and reported to the Policy Group on the information they had gathered from the very beginning of their investigation. It was Virginia Tech, not its police department, that was responsible for deciding whether or when to provide information to the campus community. In the particular circumstances occurring on April 16, 2007, Virginia Tech did not provide the timely warning required by the law and regulations.⁴

⁴ To support its claim that the issuance of the warning within 2 hours and 15 minutes of the first reports of the initial shootings exceeded the "standard that was expected of institutions in 2007", Virginia Tech cites the Department's Campus Crime Handbook and regulatory preamble statements. However, Virginia Tech's argument ignores the Department's consistent statements that the determination of when a timely warning should be issued has to be determined on a case-by-case basis. Virginia Tech's reference to the regulatory preamble discussion relating to the separate emergency notification requirement added to the HEA by Congress in 2008 is also unpersuasive since the emergency notification requirement is in addition to the timely warning requirement and is not at issue in this case. Finally, we note that Virginia Tech's reference to statements or actions by Security on Campus or individuals associated with that organization are irrelevant since that organization has no authority or role in the interpretation or application of federal law.

2. Statement in Report: The Program Review Report states that 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, 2007.

University's response – In its response, Virginia Tech noted that the Department had not requested additional information or clarification from the university. The institution contended, however, that the Department continued to solicit information from the complainants until a month before issuance of the Program Review Report. Virginia Tech stated that it asked to review the Department's administrative file, but that this request was denied. Therefore, Virginia Tech contended that since it was unable to comment on the information on which the Department is relying, its ability to prepare a comprehensive response has been jeopardized.

DOE's Comments - The Department did not solicit information from Security on Campus or the families. Representatives of the families of the victims asked to submit material, and the Department accepted that material as it would accept material from any other source. In general, as it relates to the potential Clery Act violations, the information submitted by the representatives of the families is similar to the information included in the Review Panel Report. Furthermore, the Department denies that it denied Virginia Tech's request to review the administrative file; the Department has no record of receiving such a request.

3. Statement in Report: The Program Review Report states that 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 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.

University's response – In its response, Virginia Tech argues that the Department's statements that it does not believe that a definition of "timely reports" is necessary and warranted bars the Department from determining whether a particular institution in a particular situation has provided a timely warning. The response notes that Virginia Tech did issue a notice on the morning of April 16, 2007 and argues that the notice satisfied the regulations in place at the time. The University claims that the Program Review Report effectively and improperly applies the 2009 emergency notice regulations to the 2007 incident. The response goes on to describe the statements provided by the University's Vice Provost for Academic Affairs who was a member of the Policy Group that made the decisions on what to do after hearing about the shooting. (See Attachment C, pages 11-13)

DOE's Comments – As the Department has consistently stated, the determination of whether a warning is timely is determined by the nature of the crime, the continuing danger to the campus community, and the possible risk of compromising law enforcement efforts among other circumstances surrounding the event in question. See, for example, The Handbook for Campus Crime Reporting (2005). The Department has determined that Virginia Tech did not provide a timely warning in light of the circumstances on April 16, 2007.

4. Statement in Report: The Program Review Report states that on April 16, 2007, Virginia Tech officials issued an e-mail about the threat to the campus community at 9:26 a.m.

University's Response – In its response, Virginia Tech notes that on April 16, 2007 at 9:26 a.m. institutional officials issued an e-mail notice that there had been a shooting at WAJ. The message urged the campus to be cautious and asked the community to contact VTPD if individuals observed anything suspicious or with information on the case. The University contends that the facts known at the time did not support a conclusion that any continuing threat existed and that any further act of violence was likely. The University also contends that the evidence indicated that a crime of targeted violence had occurred, a person of interest had left the campus, and there was not an ongoing threat. Virginia Tech also suggests that this was not the conclusion of one police department but three independent agencies.

DOE's Comments - The University's response claims that the VTPD, the Blacksburg PD, and the Virginia State Police had determined that the first shootings at West Ambler Johnston residence hall was an act of targeted violence and did not present a threat to the campus community. However, as that Review Panel Report demonstrates, this appears to be an overstatement of the information provided by the police to the Policy Group. At the time the Policy Group first met all that was known was that one victim was dead, one was critically injured, no witnesses saw the incident, no weapon was found at the scene, there were bloody footprints leading away from the bodies, and no suspect was in custody or had even been questioned.⁵ Based on this information, the Department concludes that an ongoing threat did exist on the Virginia Tech campus on the morning of April 16, 2007 and that a timely warning should have been issued.

5. Statement in Report: The Program Review Report states that as documented in the Review Panel and confirmed by our examination, Virginia Tech officials had information available to them that required a timely warning to the University community much

⁵ The Review Panel Report notes that the police notified the Policy Group that they had identified a person of interest who was likely not on campus. However, the Report also notes that the information about this person of interest was not reported until well after the Policy Group had begun meeting. Moreover, the Review Panel Report also notes that the police were appropriately focused on the investigation of the first shootings and left the consideration and development of any warning to the Policy Group. In fact, under Virginia Tech's established policies and practices it was only the Policy Group that could issue such a warning.

earlier than 9:26 a.m. For this reason, the Department has concluded that the timely warning requirement was not met.

University's response – The University claims that the review comingles and interchanges the definition of timely warning with the requirement that institutions have an emergency notification system (that was added in 2008). Virginia Tech claims that it considered the possible danger to the campus community in deciding whether to issue a timely warning. Virginia Tech also claims that the evidence at the crime scene was presented as an act of targeted violence. The University also discusses cases of homicide on other college campuses between 2001 and 2007 and compares the time it took Virginia Tech to provide a notification to its students and faculty with the times of these other institutions. (See the University's response, Attachment C, pages 14-16)

DOE's Comments - The University's claim that the Program Review comingled and interchanged the definition of timely warning and emergency notification is incorrect. Institutions have long been required to provide timely warnings for certain crimes. The murders that took place in WAJ Hall were within the class of crimes for which a timely warning was required under the HEA and the Department's regulations. The crime had been reported to a campus security authority, and it did present a threat to the campus community given the fact that the murderer was not known nor in custody. The shooting in WAJ Hall is precisely the type of event for which the timely warning requirement was intended.

With regard to the University's reference to crimes at other institutions of higher education and the time frames in which the timely warning was given, the Department has concluded that these examples are not useful in analyzing the timeliness of the warning given by Virginia Tech.⁶ As we have consistently noted, the determination of when a timely warning is necessary has to be made on a case-by-case basis. We note that Virginia Tech does not claim that any of the situations it cites are closely similar to the situation on April 16, 2007 – two shootings already having been reported; no identification of a confirmed suspect; and no evidence that the shooter had left the area. Accordingly, none of those examples are applicable to the current situation.⁷

6. Statement in Report: The Program Review Report states that Virginia Tech's building access logs show that the first two murders occurred in Virginia Tech's West Ambler Johnson (WAJ) Hall at approximately 7:15 A.M.

University's response – The University notes that building access logs were not available immediately following the shooting at WAJ. The timeline of events was constructed as part of the subsequent investigation in the days following the April 16, 2007 tragedy. The VTPD Dispatch office received a call at 7:20 a.m. that there was a possibility that someone had fallen from a loft bed.

⁶ We note that we do not necessarily agree with Virginia Tech's characterization of the facts in those other situations.

⁷ In any case, Virginia Tech does not claim that the Policy Group considered the decisions by these other institutions in deciding whether to issue a warning to the campus community.

DOE's Comments – The Timeline of Events prepared by the Review Panel (Attachment A) shows that the murders occurred about 7:15 a.m. The Review Panel Report noted that the exact time of the double shooting is not specifically known but that █████ left WAJ at 7:17 am.

7. Statement in Report: The Program Review Report states that sometime before 7:30 a.m., VTPD and emergency medical services personnel arrived at WAJ. The VTPD Police Chief was advised of the murders before 7:45 A.M. The Chief immediately notified the Blacksburg Police Department (BPD), and the BPD immediately dispatched a detective and evidence technician to the scene.

University's response – The University states that the VTPD police officer arrived at WAJ, Room 4040 at 7:24 a.m. and immediately requested additional resources. The Virginia Tech Rescue Squad arrived at room 4040 at 7:29 a.m. The VTPD Police Chief was advised at 7:40 a.m. that a shooting had occurred at WAJ. The VTPD Chief contacted the BPD at 7:51 a.m. to request an evidence technician as well as a detective to assist with the investigation. At 8:00 a.m., the VTPD Chief arrived at WAJ and found VTPD and BPD detectives on the scene. At 8:11 a.m., the BPD Chief arrived on the scene. The Virginia State Police was contacted and asked to respond to the scene to assist with the investigation.

DOE's Comments – The University's statement that the VTPD Chief was advised of the murders at 7:40 a.m. and not 7:45 a.m. is consistent with the Review Panel Report and is reflected in the timeline included with this FPRD.

8. Statement in Report: The Program Review Report states that the University's Executive Vice President was notified of the murders at 7:57A.M., by which time word of the killings had already reached two other high-ranking University officials (at approximately 7:30 A.M.)

University's response – The University claims that this statement is not correct. According to the University, the Executive Vice President was not contacted at 7:57 a.m. and the Review Panel Report does not indicate that two higher ranking University officials had received word of the shootings. Virginia Tech contends that, at approximately 7:30 a.m. the Associate Vice President of Student Affairs was informed by the Assistant Director for Housekeeping and Furnishings that a resident advisor had been murdered in WAJ. The Associate Vice President of Student Affairs did not learn any facts about the incident until he arrived at WAJ at approximately 7:55 a.m. He called the Vice President for Student Affairs at 8:02 a.m.

DOE's Comments - It is unclear from the University's response what time it contends that the Executive Vice President of the University was notified. The University's

response merely states that “Chief Flinchum finally gets through to the Virginia Tech Office of the Executive Vice President and notified them of the shooting.”

With regards to the timing of events, the University questions the specific times of certain actions mentioned in the program review report. For the purpose of this report, the Department has adopted the revised timeline included in the Addendum to the Review Panel Report.

9. Statement in Report: The Program Review Report states that 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. The Program Review Report states further that by 8:10 A.M., the University President was notified of the murders at WAJ.

University’s response – The University claims that these statements are not correct. The Emergency Response Teams were not deployed, and the BPD did not direct the public school to take steps to keep their students and employees safe. (See Attachment C, page 19)

DOE’s Comments – The Review Panel Report notes that both the VTPD and BPD emergency response teams were deployed. Review Panel Report, p. 28. The Review Panel Report also notes that the public schools, the Veterinary College, and other school officials all took action indicating that the information had reached the community and those parties who knew of the situation on campus were taking precautionary measures. Review Panel Report, pp. 27-29. The Review Panel Report also cites numerous statements from University officials indicating that the Policy Group was more concerned that a dangerous situation could be created by providing information to the campus community. Review Panel Report, pp. 81-82. The Policy Group apparently ignored the fact that information was getting to parts of the campus and local communities about the first shootings even without an official institutional statement and that all students, faculty and staff should be warned of the potentially dangerous situation on campus.

10. Statement in Report: The Program Review Report states: the facts strongly indicated that a 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.

University’s response – In its response, Virginia Tech argues that the potential danger to the community was considered by the Policy Group in making its decision not to issue an earlier warning. The University again claims that the evidence at the crime scene

presented as an act of targeted violence. According to the University, all of the evidence indicated that a crime of targeted violence had occurred, a person of interest had left the campus, and there was not an ongoing threat. The University cites cases of homicide on other campuses and argues that there was no significant difference between how those police departments assessed and responded to the incident as compared to actions taken following the WAJ shootings. (See Attachment C, pages 20-22)

DOE's Comments - At the time it began meeting, the Policy Committee knew that a murder had occurred on campus, that no specific individuals had been charged and that no suspects were in custody. Because so little was known regarding the circumstances of the murders in WAJ Hall, a number of different possibilities existed. Virginia Tech has not demonstrated that it made a reasonable determination not to notify the campus community. Instead, the evidence shows that it did not have enough information to make the determination that this serious crime posed no threat to the campus. In fact, the University eventually made the determination that a warning was appropriate when it subsequently issued the timely warning that was released at 9:26 a.m., more than two hours after the initial call to VTPD dispatch.

11. Statement in Report: The Program Review Report states that 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 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.

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.

University's response - The University contends that the potential danger to the community was considered in preparing the warning that was issued at 9:26 a.m. The University argues that the evidence at the crime scene presented as an act of targeted violence. All the evidence indicated that a crime of targeted violence had occurred, a person of interest had left the campus, and there was not an ongoing threat. The notification sent was based on this determination and based on the information known at

the time the message was appropriate. The language “be cautious” and “contact Virginia Tech Police if you observe anything suspicious or with information on the case” would not have been used for an accidental shooting and indicates more than an accidental shooting occurred.

DOE’s Comments - The University’s response does not change the Department’s position that the message lack specificity in describing the incident.⁸

12. Statement in Report: The Program Review Report states that 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’s response – The document in question does not appear to be an earlier draft of the message sent. The time written on the document is 9:26 a.m., the same time that the e-mail notification was sent to the campus.

DOE’s Comments – The University notes that the time on the document is 9:26 A.M, the time the warning went out to the campus. However, this document included information that was not included in the timely warning message that was sent to notify the campus community. It appears to be an earlier draft of a notice that included information that was not included in the actual notice sent to students. This indicates the institution did consider providing additional information to students and faculty, but choose not to.

13. Statement in Report: The Program Review Report states that 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 they were safe.

University’s response – The University argues that this statement is incorrect. Virginia Tech correctly notes that the Review Panel Report (page 28) states: “About 8:15 a.m. – Two senior officials at Virginia Tech have conversations with family members in which the shooting on campus is related. In one conversation, by phone, the official advised her son, a student at Virginia Tech, to go to class. In the other, in person, the official arranged for extended babysitting.”

⁸ We also note that the Review Panel Report also criticizes the statements issued by Virginia Tech after the full gravity of the shootings at Norris Hall was known by the Policy Group. That Report notes that the statements were too late to be of value to the security of students, faculty and staff and provided less than full disclosure of the situation. Review Panel Report, p. 97. While our review and this determination have focused on the initial “warning” to the Virginia Tech campus at 9:26 a.m. on April 16, 2007, it is also clear that the institution’s later statements would not satisfy the requirements for an appropriate timely warning under the Clery Act and the Department’s regulations.

DOE's Comments – Virginia Tech's response correctly cites one entry in the Review Panel Report. However, Virginia Tech's response misses the point. College officials who were aware of the shooting in WAJ made decisions about the actions they needed (or didn't need to take) to protect themselves and their families. On the other hand, the Policy Group decided that it was not necessary to provide this same information to the rest of the staff, faculty and students at Virginia Tech until later in the morning. The University correctly notes how the senior officials mentioned in the entry above chose to respond to that information. However, the Review Panel Report also notes that the Virginia Tech Center for Professional and Continuing Education locked down at about 8 a.m.; Virginia Tech's Executive Director of Government Relations directed that the doors to his office be locked at 8:52 a.m.; the University's Veterinary College locked down between 9 and 9:15 a.m. and Virginia Tech trash pickup was cancelled at 9:05 a.m.. Review Panel Report, pages 27-29. If the University had provided an appropriate timely warning after the first shootings at WAJ, the other members of the campus community may have had enough time to take similar actions to protect themselves.

14. Statement in Report: The Program Review Report stated that 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 at 8:52 A.M., signaling that the University's senior officials believed that the crisis continued to pose an immediate and serious ongoing threat. The Program Review Report further stated that 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."

University's response – The University stated that the statement in the program review is inaccurate. The University claims that only the Executive Director of Government Relations directed that the doors to his office be locked. No other doors, including the President's Office were locked, no entrances to the building were locked, and no law enforcement personnel or other extraordinary security measures were emplaced in Burruss Hall following the WAJ incident. Persons could enter and leave Burruss Hall in a normal fashion. Further, the message sent by Co-Director was sent at 10:25 a.m.

DOE's Comments - We acknowledge that the statements in the program review report are not supported by the Review Panel Report. As noted in item 13 above, however, the Review Panel Report notes that some school officials and offices who had information about the double shootings took actions to notify their families and protect themselves before an official timely warning had been issued to all of the campus community. Virginia Tech's failure to send an earlier warning meant that most students and faculty did not have that same opportunity.

15. Statement in Report: The Program Review Report states that the Environmental Health and Safety Services (EHSS) was one of the principal offices charged with issuing timely warnings.

University's response – The University contends that this statement is incorrect and that EHSS was not responsible for issuing a “timely warning.” The University notes that within the Virginia Tech Emergency Response Plan description of the Emergency Response Resource Group (ERRG), there is a task listed as “issue communications and warning through University Relations.” EHSS is a member of the ERRG. In accordance with the ICS, the responsibility as written within the Emergency Response Plan to issue communications and warning was not delegated to the ERRG. (See Attachment C, pages 26-27)

DOE's Comments – Virginia Tech correctly notes that EHSS is not solely responsible for issuing timely warnings but is a member of the ERRG which, as of April 16, 2007, had the responsibility for issuing timely warnings.

16. Report Statement: The Program Review Report states that it is likely that the warning would have reached more students and employees and may have saved lives if it had been sent before the 9:05 A.M. classes began. Based on all the information available at the time, we agree with the conclusion of the Review Panel 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.

University's response – The University argues that the Program Review has an inevitable underlying current of hindsight and observational bias. Virginia Tech claims that this hindsight and observational bias create the tendency to review events as more predictable than, in fact, they were at the time of, and preceding the event in question. The response goes on to discuss some academic studies of the alleged effects of hindsight bias and alleges that certain conclusions in the Program Review Report demonstrate such a bias (See Attachment C, pages 27-30)

DOE's Comments - The Department disagrees with the University's claim that the Program Review reflects hindsight and observational bias. The Department's determination that Virginia Tech did not comply with the timely warning provisions of the Clery Act is based on the fact that the school did not act reasonably in waiting 2 hours and fifteen minutes to issue a timely warning to the campus community. It did not alert students and employees to the fact that a shooting had taken place in WAJ Hall and that one student was dead and one was critically injured. Even before the Policy Group began meeting at 8:25 a.m., the University knew that one student was dead and a second student had been shot, a murder investigation was in progress, no weapon had been found on the scene and there were bloody footprints leading away from the scene of the shooting. Given these facts, Virginia Tech officials knew or should have known that a murderer might still be on campus or in the surrounding community. Despite these facts, Virginia Tech failed to meet its obligation to issue a timely warning that would provide students, faculty and staff the information they needed to consider taking action for their own protection. While it may or may not have been in a position to issue the warning prior to the start of 8:00 classes, Virginia Tech did have enough time to issue the warning to those

students and staff members who were scheduled to be on campus for 9:05 classes or scheduled work.

The Department has consistently noted that what constitutes a reasonable amount of time to provide a timely warning varies depending on the crime and the circumstances. It may be reasonable to wait 12-24 hours in the case of a motor vehicle theft. In that scenario no one has been physically hurt and the situation poses no discernable potential for physical harm to the campus. It is not reasonable to wait two hours to issue a warning when the circumstances of a murder are not known and at a time when thousands of students and staff members are arriving on campus. Such circumstances should have prompted a quicker response by the institution's officials before or after the events of April 16, 2007. The Department is not arguing that the University should have taken any specific action beyond the notification, such as canceling classes or "locking down" buildings. What the Department has determined is that given the circumstances, the University should have provided notification to students and staff in a shorter timeframe so that they could determine how they wanted to respond to this serious criminal event. This is the purpose of the timely warning provisions.

B. Policy Violation

Virginia Tech did not comply with its own policies on the issuance of timely warnings as published in its campus security reports.

17. Statement in Report: The Program Review Report states that the timely warning policy that was in place at Virginia Tech 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 offices that would be responsible for issuing timely warnings, nor did it explain how those warnings would be transmitted.

The policy as it appeared in the University's campus security report for calendar year 2005, and that was in effect 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"

University's response - Virginia Tech maintains that : (1) the timely warning policy included in its Campus Security Report (CSR) as effective on April 16, 2007 met the requirements of 34 CFR 668.46(b)(2)(i); and (2) its policy language was similar to the policy language used by other institutions at the time. The University's response, states, "The "timely warning" policy in Virginia Tech's Campus Security Report in effect on April 16, 2007 met the guidance for a timely warning policy in the *The Handbook for*

Campus Crime Reporting issued by the Department. The University states in its response that its internal policy #5615, enacted on May 7, 2002, was also in place on April 16, 2007. The policy states that “University Relations and the University Police will make the campus community aware of crimes that have occurred and necessitate caution on the part of students and employees, in a timely fashion and in such a way as to aid in the prevention of similar occurrences.”

DOE’s Comments –Virginia Tech admits that its timely warning policy did not include a description of the manner in which a warning will be disseminated, as recommended by the Department’s *Handbook*. The Clery Act and the Department’s regulations do not specify any particular manner in which an institution must disseminate the warning, only that an institution must disclose the manner in which it will disseminate the warning. Virginia Tech’s policy did not provide this information.

The Department acknowledges that Virginia Tech’s policy generally addressed the first element suggested by the *Handbook* -- that the policy include the circumstances for which a timely warning will be issued. However, the Department disagrees with the University’s claim that its policy included the second element, the individual office responsible for issuing the timely warning. In its Campus Security Report, Virginia Tech told its students, faculty, staff and the Department that the University Police Department would have responsibility for preparing and disseminating a timely warning. However, internal policy #5615 provides that University Relations will also be involved in the process. Moreover, when the murders occurred on April 16, 2007, the matter of deciding on and providing a warning was left to the Policy Group, which did not include a representative of the Police Department.

The Department also disagrees with Virginia Tech’s claim that there is merit in not providing information on how warnings will be disseminated . It is critical that members of the campus community know how they will receive timely warnings of potentially dangerous situations. There is nothing in the Department’s regulations or the Clery Act Handbook that limits the types or number of methods an institution may use to disseminate a timely warning.

The Department notes that the timely warning policy included in Virginia Tech’s internal policy #5615 was not the policy that had been communicated to students and the campus community and included in Virginia Tech’s CSR in effect as of April 2007. Virginia Tech’s failure to include this information in the CSR is problematic because it would have given the campus community notice that there was another layer of officials involved in putting out a timely warning. Virginia Tech’s internal policy #5615, dated May 7, 2002 is an internal policy and procedures document and was not consistent with the policy disclosed in the CSR for Clery purposes.

18. Statement in Report: The Program Review Report states that 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 the students and employees.

University's response – The University contends that it had a “timely warning” policy in place that met the requirements of 34 CFR 668.46(b)(2)(i) and that the policy was properly described in VTPD's annual Campus Security Report.

DOE's Comments – Virginia Tech's CSR does include a timely warning policy, but as indicated previously, the policy statement did not reflect the school's actual practices or policies and the policy statement did not provide critical information to students, faculty and staff.

19. Statement in Report: The Program Review Report states that 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. 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.

University's response – The University claims that that the statements in the Program Review Report are incorrect and unfounded. The University argues that the procedure for issuing a “timely warning” (as of April 2007) was reflected in the VTPD's annual Campus Security Report and was supported by Virginia Tech's internal policy # 5615 dated May 7, 2002. (See page 33 of Attachment C).

DOE's Comments – The Department disagrees with Virginia Tech. Virginia Tech's internal policy #5615 is inconsistent with the policy Virginia Tech included in its CSR and disclosed to students, faculty, staff and the Department. The roles of the VTPD are different in each document. The CSR states that the police department will prepare a release and that the information will be disseminated to all students, faculty, and staff and to the local community. Virginia Tech's internal policy #5615 includes University Relations in the production of the notice. In fact, moreover, the University Relations office was central to the dissemination of any timely warning notice because the VTPD did not have the computer code necessary to send out a warning. Review Panel Report at pages 87 and 87-C. The University did not notify its students, faculty, staff or the Department of the role of University Relations in issuing timely warnings on crimes that represented a threat to individuals on campus.

20. Statement in Report: The Program Review Report states that, 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.

University's response – The University repeats its claim that the Program Review Report incorrectly comingles and interchanges the definition of timely warning with emergency notification. Virginia Tech also claims that its systems provided a redundancy

component of critical pathways. The school contends that VTPD had the authority to prepare and disseminate notification and “timely warnings” and that Virginia Tech’s internal policy #5615 articulates the relationship between the VTPD and the University Relations. (See Attachment C, page 34)

DOE’s Comments –Contrary to the University’s response and the policy provided to students, faculty, staff and the Department, the VTPD did not prepare or disseminate any warnings sent to the campus community on April 16, 2007. Instead, the Policy Group, on which no police officials served at the time, made the decision regarding if and when a timely warning would be issued and what the warning would say. The Policy Group prepared and disseminated the timely warning that was issued in response to the shooting at WAJ hall.

Virginia Tech continues to refer to internal policy #5615 as its source of action and guidance on the morning of April 16, 2007. Again, internal policy #5615 was not the official Clery Act policy that has been disclosed to students and employees in Virginia Tech’s CSR and was, in fact, contradictory to the policy disclosed to the campus community.

Moreover, Virginia Tech did not even comply with internal policy #5615 on the morning of April 16, 2007. The University’s response notes (on page 38) that the mechanics of sending a timely warning were managed by either the Associate Vice President for University Relations or the Director of News and Information. The response further states that each of these individuals had the ability to access the system from remote locations, and one was available 24/7. There was no reason why a warning could have been issued much earlier than it was. Instead nothing was done until the Policy Group met and took another hour to deliberate and construct the message that was sent out at 9:26 a.m.

21. Statement in Report: The Program Review Report states that at approximately 8:25 A.M., the University Policy Group met and discussed the unfolding events. It is our understanding that no Virginia Tech Police officials served on the Policy Group and no police were part of the Policy Group’s initial deliberations about emergency notification.

University’s response – Virginia Tech claims that this statement is incorrect. The meeting convened at 8:35 a.m. While at the time no police officials served on the Policy Group, the Policy Group membership was in contact with VTPD leadership.

DOE’s Comments – The Review Panel Report’s Timeline of Events, Attachment A, shows the Policy Group convened at 8:25 a.m. instead of 8:35 a.m. as claimed by the University. However, the response confirms our understanding that no Virginia Tech Police officials served on the Policy Group.

22. Statement in Report: The Program Review Report states that at 9:00 A.M., the Policy Group was briefed by the VTPD and at 9:25 A.M., a VTPD captain was brought into the

Policy Group's meeting as a police liaison. During these meetings, the Policy Group discussed the warning that would be issued to the campus community, but the police department was not actively involved in those discussions.

University response – Virginia Tech claims that the Policy Group convened at 8:35 a.m., and that individual members shared the information they had. Additional information and updates were provided by the VTPD, as well as other university functional units, by a series of telephone calls. The University notes that, although the Chief of the VTPD is now a member of the Policy Group, he may still have to communicate with the Policy Group via telephone during future incidents if the situation requires that he serve on-scene.

DOE's Comments – The University's response confirms that the police department was not actively involved in the Policy Group's discussions to issue the warning. As noted in the Review Panel's Report, the VTPD provided information to the Policy Group and left it to that group to handle public notices while the police were investigating the first murders.

The Department acknowledges that Virginia Tech has made the Chief of the VTPD a member of the Policy Group. We recommend that if future incidents require that the Chief be at the scene of a crime, another police department official should participate in the Policy Group discussions.

23. Statement in Report: The Program Review Report states that Virginia Tech's operational policy statement at the time gave the VTPD the authority to issue a warning.

University's response – In its response, Virginia Tech noted that the timely warning policy statement in the institution's annual Campus Security Report states: "At times it may be necessary for "timely warning" to be issued to the university community. . . . 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." The University also claims that the policy included in the Campus Security Report is supported by Virginia Tech's internal policy #5615. (See Attachment C, page 35)

DOE's Comments – In its annual CSR, Virginia Tech described a timely warning policy that gave the VTPD the authority to issue a warning, but that policy was not followed. Virginia Tech's internal policy #5615 was followed instead.

24. Statement in Report -- The Program Review Report states that in practice the VTPD's Chief was required to consult with the UPG before a warning was issued.

University response – In its response, Virginia Tech claimed that the Department's statement was not consistent with internal policy #5615.

DOE's Comments –Virginia Tech's internal policy #5615 does not mention that the Policy Group will play a role in determining the timing of and information in a timely warning. More importantly, however, the policy in the CSR provided to Virginia Tech's students, faculty, staff and the Department does not mention the role of the Policy Group or the University Relations Department in preparing or issuing timely warnings on crimes.

25. Statement in Report: The Program Review Report states that access to the technological means to send timely warning communications was under exclusive control of the Associate V.P. for University Relations and the Director of News and Information who had the required codes. None of these additional procedures were disclosed to the 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.

University response – It is Virginia Tech's position that the systems in place at the school provided redundancy. According to Virginia Tech, the VTPD had the authority to prepare and disseminate timely warnings and internal policy #5615 articulated the relationship between the VTPD and University Relations. The University also claims that the technical and procedural mechanism of how the message is sent is not germane to the policy statement. (See Attachment C, page 36)

DOE's Comments - The timely warning policy in an institution's CSR should include meaningful information that provides notice to the campus community regarding what circumstances would lead to a timely warning being issued, by whom it will be issued and, in general, what the mode of communication will be for those warnings. The Department does not dictate the means of communication an institution must use. However, the Department does expect that an institution will tell its students how they can expect a "timely warning" to be communicated. Virginia Tech did not provide this information to its students, faculty or staff.

26. Statement in Report: The Program Review Report states that 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.

University's response – The University claims that the information provided in its response refutes the allegations and alleged violations and demonstrates that it accurately described its timely warning procedures and that those procedures were sufficient to issue a "timely warning."

DOE's Comments – As previously discussed, Virginia Tech did not provide sufficient information in the CSR regarding its timely warning policies and did not follow the policies described in the CSR.

27. Statement in Report: The Program Review Report states that Virginia Tech's failure to issue timely warnings about the serious and ongoing 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.

University's response – Virginia Tech claims that it has overwhelmingly demonstrated that a finding by the Department that there was a “timely warning” violation is not supported by the evidence. The institution claims that the intent of the “timely warning” requirement is not to actually provide a warning to the campus community during a crime but to provide information at best several hours post incident and normally with 24 to 48 hours.

The University also claims that if one assumes the “timely warning” process was applicable then a review of the “timely warning” issuance process is considered. The guidance provided in *The Handbook for Campus Crime Reporting*, published in 2005, is found in Chapter 5, page 62 and states, “The issuing of a timely warning must be decided on a case-by-case basis in light of all of the facts surrounding a crime, including factors such as the nature of the crime and the continuing danger to the campus community.” The response goes on to say that the actions and decisions made by responding police agencies on April 16, 2007 were consistent with guidelines. In addition, the response refers to other cases of homicide on college campuses and compares Virginia Tech's response time to response times of the other institutions. (See Attachment C, pages 44-46)

DOE's Comments - It is the Department's determination that Virginia Tech did not comply with the timely warning provisions of the Clery Act because it did not act reasonably in waiting 2 hours and fifteen minutes to issue a timely warning to the campus community. It did not alert students and employees to the fact that a shooting had taken place in WAJ Hall and that one student was dead and one was critically injured. Virginia Tech officials were informed by the police that this was a murder investigation as there was no weapon found on the scene and there were bloody footprints leading away from the scene of the shootings. Given the fact that Virginia Tech knew that a murderer might still be on campus or in the surrounding community, Virginia Tech should have issued a timely warning sooner.

Final Determination

Virginia Tech failed to issue adequate warnings in a timely manner in response to the murders on campus on April 16, 2007. The warning issued at 9:26 a.m. was not prepared or disseminated in a manner to give clear and timely notice of the ongoing threat to students and employees as a result of the Clery Act reportable crimes that occurred in

WAJ. Moreover, Virginia Tech did not follow its own policy for the issuance of timely warnings as published in its annual campus security report.

To quote the Review Panel's Report, "The University body was not put on high alert by the actions of the University administration and was largely taken by surprise by the events that followed. Warning the students, faculty, and staff might have made a difference. Putting more people on guard could have resulted in quicker recognition of a problem or suspicious activity, quicker reporting to police, and quicker response of police. Nearly everyone at Virginia Tech is an adult and capable of making decisions about potentially dangerous situations to safeguard themselves. So the earlier and clearer the warning, the more chance an individual had of surviving." In all, more than two hours elapsed between the time University officials became aware of the first shootings (and the first murder) and the issuance of the first vague warning. For these reasons, the Department has determined that the University failed to comply with the timely warning requirement.

With regard to the second component of this violation, the Department has determined that Virginia Tech did not comply with its own policy on the issuance of timely warnings as published in its annual campus security report. The University policy in place on April 16, 2007 did not provide students, faculty and staff with actual notice of the offices that would disseminate the warning or how these warnings would be transmitted.

The Department appreciates the explanation of extensive safety improvements made by Virginia Tech and detailed in the response. While Virginia Tech's commitment to improved timely warning policies and procedures will hopefully make the University a safer place going forward, corrective actions do not diminish the seriousness of the violations identified during the program review.

Therefore, the University is advised that as a result of the serious findings identified during the program review, this FPRD is being referred to the Administrative Actions and Appeals Division (AAAD) for consideration of possible adverse administrative action. Such action may include a fine, or the limitation, suspension or termination of the eligibility of the University pursuant to 34 C.F.R. Part 668, Subpart G. If AAAD initiates any action, a separate notification will be provided which will include information on the University's appeal rights and procedures to file an appeal.

While the University may not appeal this Final Determination, Virginia Tech will have a right to appeal if AAAD initiates an adverse administrative action as a result of the violations of the Clery Act identified in this Final Program Review Determination letter.