Timely Warning Notices

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Many of you, by now, hopefully have read the Final Program Review Determination (FPRD) report regarding Virginia Tech issued by the Department of Education (ED) on December 9, 2010. I wanted to take an opportunity to point out a few incredibly important teaching points and “to-do list” items that resonated with me as I read the report:

**Background:** The complaint that was received by the Department of Education alleged 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 security reports (CSR) and distributed to the students and employees, did not accurately explain Virginia Tech’s actual procedures and protocols for issuing timely warnings.”

**Important legal language to consider:** Timely Warning Notice should be issued for a Clery crime category that is “considered by the institution to represent a threat to students and employees” (from the Nov 1, 1999 Federal Register). The Department of Education Handbook from 2005 uses the phrase, “considered by the institution to represent a serious or continuing threat to student and employees” to define timely warning notice VERSUS the language from the new HEOA Regulations, “an emergency notification is required in the case of an immediate threat to the health and safety of students or employees occurring on campus” (Federal Register Oct 29, 2009). Note the differences.

However, what you are dealing with more now than ever, as a practitioner, are the perceptions and expectations of your students and employees, the Media, the Department of Education and others—the differences between all of these definitions, at this point should be chalked up to minor nuance and not substantive differences. Our “reality” is that none of those entities will see the differences between timely warning notices and immediate notifications language or the expectations surrounding that language. Moving forward, we have to assume that no one but the practitioners in Campus Public Safety will see much of a distinction.

**So, what to do now?** You have to be prepared for the Department of Education to come in to the fray after all of the facts are known--for them to “Monday morning quarterback” your communications to the University community. If you have a potential serious crime or an emergency as described below, are you prepared to get a notice out to your community quickly, even if all of the facts are unknown? You will be judged based on the time it took to get that first message out to the community and the quality of the content. With regard to time—we are now talking about minutes versus hours. The quality of the content is important, because you have to tell the community what happened—for example, I saw an alert recently in the news that said, “there was a felonious assault by the recreation center, suspect at large, tune into local media for more” --when in fact a
student had been stabbed to death. Can you tell from what was in the alert what happened? The answer is NO. Would students/staff potentially change their behaviors if they knew someone was stabbed to death and the suspect was on the loose? Maybe (but we have to treat that maybe as a “yes” and get the information out quickly). The fact is this institution will likely be judged for not providing an accurate description of what occurred! Don’t let this be you or your institution in the line of fire. Review what is being sent out under the auspices of a timely warning notice or immediate notification and make sure it provides a clear description of what actually occurred!

**Descriptions of the types of crimes/emergencies** (not all inclusive, but to get you thinking) **include the following:** A crime against person, i.e. murder (or death of any sort if you are not sure if it is a suspicious death or not); robbery; aggravated assault; sexual assault; OR any emergency situation that may cause a threat to the health and safety of your community, such as an active shooter on campus, hostage/barricade situation, a riot, a suspicious package with confirmation of a device, a tornado, a fire/explosion, suspicious death, structural damage to a University owned or controlled facility, biological threat (anthrax, etc), significant flooding, a gas leak, hazardous materials spill, etc.

**Policy:** Do you have a written Standard Operating Procedure (SOP), General Order (GO) or Institutional Guidelines of some sort outlining specifically what types of incidents will be reviewed for a timely warning notice and what types of incidents will be reviewed for an immediate notification? If not, you should develop an SOP, GO or guidelines and review them with your administration as soon as possible. You do not want to have the discussion about what warrants a timely warning or immediate notification after an incident occurs—remember—the ticking clock is your enemy.

If you do have an SOP, GO or guidelines, have you compared what is written in those documents to what is written in your Annual Security Report? If not, do it soon. Is what you are actually doing in practice described accurately and thoroughly in both documents? If not, change them.

The 2005 Department of Education Handbook offers policy “suggestions” on page 87, “We suggest that your timely warning notice policy include: 1) the circumstances for which a warning will be issued; 2) the individual or office responsible for issuing the warning; and 3) the manner in which the warning will be disseminated.” There is no doubt in my mind that the Department of Education treated these “suggestions” as requirements in the VA Tech Final Program Review Determination (FPRD) report.

**Suggested Language-**
1) The circumstances for which a warning will be issued—Indicate in your SOP and ASR (Annual Security Report) what types of crimes you require a timely warning notice and which ones will be reviewed on a case-by-case basis. (Don’t say that you do not or will not ever put out a timely warning notice for any of the Clery reportable crimes—that is frowned upon by ED). Consider language like this—
• The Police Department Chief or a designee will develop timely warning notices for the University Community to notify members of the community about serious crimes against people that occur on campus, where it is determined that the incident may pose an ongoing threat to members of the University community. Timely Warning Notices are usually distributed for the following Uniformed Crime Reporting Program (UCR)/National Incident Based Reporting System (NIBRS) classifications: arson, criminal homicide, and robbery. Cases of aggravated assault and sex offenses are considered on a case-by-case basis, depending on the facts of the case and the information known by the Campus PD. For example, if an assault occurs between two students who have a disagreement, there may be no on-going threat to other University community members, therefore; a Timely Warning Notice would not be distributed. Sexual Assaults are considered on a case by case basis depending on the facts of the case, when and where the incident occurred, when it was reported, and the amount of information known by the Campus Police Department. Timely Warning Notices may be distributed for other crimes as determined necessary by the Chief of Police or his or her designee in his or her absence.

2) The individual or office responsible for issuing the warning—Indicate in your SOP and ASR who writes the timely warning notice, who reviews or approves it and who hits the button to disseminate it. If more than one office/person is involved in any of the steps; indicate who the potential players are, by department or title. Consider language like this—

The Police Department Chief or a designee will develop timely warning notices for the University Community to notify members of the community about serious crimes against people that occur on campus, where it is determined that the incident may pose an ongoing threat to members of the University community.

3) The manner in which the warning will be disseminated—Indicate in your SOP and ASR what systems or processes will be used to get the warning out to the community. Consider language like this—

• In an effort to provide timely notice to the University community, and in the event of a serious incident which may pose an on-going threat to members of the University community, a blast email Timely Warning Notice is sent to all students and employees on campus. The alerts are generally written by the Chief of Police or a designee and they are approved and distributed to the community by External Relations. Updates to the University community about any particular case resulting in a Timely Warning Notice may be distributed via blast email, may be posted on the (Police or Campus Alerts) web site or may be shared with The Student Newspaper for a follow-up story. Timely Warning Notice posters may also be posted by University PD in campus buildings when deemed necessary. When Timely Warning Notice are posted in campus buildings, they are printed on orange paper and posted in the lobby/entrance area of the affected building(s) for seven days.

Who is doing the initial review of incidents and crimes on campus? Most likely, it is the job of your line supervisors. They start this process for most incidents that will occur on your campus. So, have your line supervisors been trained about what types of incidents the administration believes could potentially warrant a timely warning notice or immediate notification to the campus community? If not, get them trained. If they do not contact the appropriate administrator to get the notification chain moving immediately following an
emergency or serious crime, the institution will lose valuable time. I read a case recently, where an institution had a murder on campus and it took 90 minutes for the institution to put out an alert. The person in the police department’s chain of command who was responsible for writing the alert was not notified by the on-duty supervisors until 45 minutes after the incident was reported. The time to get it to the community was subsequently doubled! The line supervisors are often times the key to your success (or demise).

Timely Warnings
Post Virginia Tech, the landscape is changing and the Department of Education has made it clear that they are not willing to give institutions specific guidelines by defining “timely” but that you are at their mercy if you are audited!

What this tells us is that the amount of time that it takes to send the first timely warning or immediate notification to the community will be judged from the perspective of hindsight! So, get your ducks in a row in advance and make sure that everyone on your team understands that “time” is your enemy in any situation that can be judged by others who have the benefit of hindsight, as having caused a threat to your community.

I have said in all of my Advanced Clery Act Training classes that I believe it is a tactical error for institutions to have the campus police or public safety agency as the primary department responsible for sending the immediate notification messages to the community. A lesson that we have learned from incidents at numerous institutions over the past three years is that when a serious incident or emergency situation occurs on a campus, the police/public safety staff are primary first responders who do not have sufficient time or resources to handle the responsibility of developing and sending the messages to the community in a timely manner. The officers, supervisors and others in the uniformed division chain of command are responding to the scene while the communications staff members are quickly overwhelmed with phone calls and radio traffic. The FPRD made it clear that it is an institutional responsibility to determine whether an alert is issued by stating the following, “it was Virginia Tech (administration), not its police department, that was responsible for deciding whether or when to provide information to the campus community.”

After Virginia Tech, there was a suspicious death on campus at the University where I was Chief. The initial responding officers from my department and the local PD could not tell me in the first 15-20 minutes if the death was of natural causes or a suspicious death (and believe me, I tried to get an answer to that question very quickly)—so, we put out a timely warning notice to the community. Why? Because I could not be sure that the death was from natural causes. The shootings at Virginia Tech unequivocally taught me one thing—you never know what is coming next. We would all do well to learn that lesson now. If you can’t say with certainty that no further threat exists, put out the warning, notice or whatever you want to call it and do it quickly. You can always update it when and if there is no longer a potential threat.

Another interesting opinion in the FPRD report was the opinion of ED that “an unknown shooter might be loose on campus made the situation an ongoing threat at that time, and it remained a threat (ongoing) until the shooter was apprehended.” This finding implies that if a violent crime occurs on campus and the suspect(s) is at large,
the institution should consider this an ongoing threat to the campus community and should issue a timely warning notice or immediate notification without delay.

Consulting with local law enforcement—Although the Department of Education encourages campus law enforcement to collaborate with the local authorities, there have been several cases that I am aware of where this collaboration resulted in the local police department requesting that the campus police agency not issue a timely warning notice to the community. However, these local authorities will not be held in non-compliance, but your institution may be held accountable. Therefore, educate your local police officials in advance about the law and your obligations. This will allow them to understand the challenges that you face when an incident occurs and may assist you in quickly reaching a compromise to serve their needs and allow you to inform your community, when there is a serious, on-going danger.

The bottom line is that the Department of Education said numerous times in the VA Tech FPRD report that “the determination of when a timely warning notice should be issued has to be determined on a case-by-case basis”—what this means to the practitioner is, ED isn’t going to give you concrete guidelines but they will judge you after the fact, basing their findings on whether or not they believe that you should have determined that a serious on-going threat to the community existed. The down side is that they are provided the benefit of knowing the rest of the story when they make that decision…