

No. 18-1213

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**United States Court of Appeals  
for the Federal Circuit**

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ASHFORD UNIVERSITY, LLC,

*Petitioner,*

v.

SECRETARY OF VETERANS AFFAIRS,

*Respondent.*

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**UNOPPOSED MOTION TO  
EXTEND THE BRIEFING SCHEDULE**

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Pursuant to Federal Rules of Appellate Procedure 26(b) and 27 and the Rules of this Court, Petitioner Ashford University, LLC (“Ashford”) requests a 45-day extension of time to file its opening brief, through and until January 29, 2019. Counsel for Respondent Secretary of Veterans Affairs (“VA”) has stated that VA does not oppose this request, which arises from the parties’ efforts to resolve this matter without further litigation.

Ashford’s opening brief is currently due on December 14, 2018. The Court has three times modified the briefing schedule, on Ashford’s motions, to facilitate the resolution of disputes regarding VA’s preparation of its indices of record, including through motion practice that resulted in an order of the Court directing VA to supplement its initial index of record. *See* Dkt. 25, 28, 31.

In fulfillment of Federal Circuit Rule 26(b)(5), undersigned counsel declares under penalty of perjury that there is good cause for a further extension of the time within which to file Ashford’s opening brief and states as follows:

1. On September 27, 2018, the Court ordered that Ashford's opening brief would be due sixty days after VA filed a second supplemental index of record. Dkt. 31. VA filed its second supplemental index of record on October 15, 2018. Dkt. 32. Accordingly, Ashford's opening brief is currently due on December 14, 2018.

2. VA and Ashford are engaged in discussions aimed a resolution that will end this litigation. The path currently being explored by the parties is somewhat more complex than in the ordinary case because it involves administrative action by a State agency that is not a party to this litigation.

3. The trigger event for this litigation was VA's determination that Ashford's state-level approval to participate in G.I. Bill programs was improper because it was issued by an Arizona agency, rather than the California agency that VA regards as the proper authority. The G.I. Bill is a program of cooperative federalism in which an individual's receipt of federal educational assistance is conditioned, as relevant, on enrollment "in a course of education offered by an educational institution" that is "approved . . . by the State approving authority for the State where such educational institution is located." 38 U.S.C. § 3672(a); *see also* 38

C.F.R. 21.4151(b)(2) (“State approving agencies are responsible for . . . [d]etermining those courses which may be approved for the enrollment of veterans and eligible persons”).

4. Ashford continues to believe that its current state-level approvals are legally appropriate. Nonetheless, in connection with ongoing discussions with VA, Ashford agreed to submit a renewed application to the California State Approving Agency for Veterans Education (“CSAAVE”).

5. Ashford submitted the application on November 16, 2018. On November 19, 2018, CSAAVE acknowledged receipt of that application and stated that “applications are handled in the order in which they are received and the review process can take up to 45–60 days,” although Ashford’s understanding is that CSAAVE’s review clock may in some circumstances be extended by another 30 days. Ashford hopes to have a response from CSAAVE by late January, and that the response will allow Ashford and VA to resolve the dispute without further litigation.

6. In light of this prospect, there is good cause to extend Ashford’s deadline for filing an opening brief until January 29, 2019, by

which time Ashford hopes to have a response from CSAAVE. As noted above, VA does not oppose this request.

December 7, 2018

Respectfully submitted,

/s/ Carter G. Phillips

Carter G. Phillips

*Counsel of Record*

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**CERTIFICATE OF COMPLIANCE**

The foregoing Motion complies with Federal Rule of Appellate Procedure 27(d)(2)(A)'s type-volume limitations because it contains 569 words, as determined by the Microsoft Word 2016 word-processing system used to prepare the brief. The Motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E)'s type-face and type-style requirements because it has been prepared in a proportionally spaced typeface using the Microsoft Word 2016 word-processing system in 14-point Century Schoolbook font.

/s/ Carter G. Phillips  
Carter G. Phillips

**CERTIFICATE OF INTEREST**

Counsel for Petitioner certifies the following:

1. The full name of every party represented by me is:

Ashford University, LLC.

2. The name of the real party in interest is:

Ashford University, LLC.

3. All parent corporations and any publicly held companies

that own 10 percent or more of stock of the party represented by me are:

Bridgepoint Education, Inc.

4. The names of all law firms and the partners or associates that appeared for the party now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

N/A

December 7, 2018

/s/ Carter G. Phillips  
Carter G. Phillips

**DECLARATION OF CARTER G. PHILLIPS**

CARTER G. PHILLIPS declares:

1. I am counsel of record for Petitioner Ashford University, LLC (“Ashford”) in *Ashford University, LLC v. Secretary of Veterans Affairs*, No. 18-1213, pending in this Court. I am responsible for preparing and filing Ashford’s opening brief in this matter.

2. I make this Declaration in support of Ashford’s unopposed motion for a further extension of time to file its opening brief, through and until January 29, 2019. This is Ashford’s first motion for an extension of time to file its opening brief since Respondent Secretary of Veterans Affairs (“VA”) filed the operative index of record. The Court has three times modified the briefing schedule, on Ashford’s motions, to facilitate the resolution of disputes regarding VA’s preparation of prior versions of the index, including through motion practice that resulted in an order of the Court directing VA to supplement its initial index of record. *See* Dkt. 25, 28, 31.

3. Ashford filed this Petition for Review after VA determined that Ashford’s state-level approval to participate in G.I. Bill programs



was improper because it was issued by an Arizona agency, rather than the California agency that VA regards as the proper authority.

4. Ashford continues to believe that its current state-level approvals are legally appropriate. Nonetheless, VA and Ashford have engaged in discussions aimed a resolution that will end this litigation. As part of these discussions, Ashford agreed to submit a renewed application to the California State Approving Agency for Veterans Education (“CSAAVE”). If approved, this development would likely lead to a resolution of this litigation. Such an outcome is dependent on action by CSAAVE, which is not a party to this litigation and which is not controlled by VA.

5. Ashford submitted its application to CSAAVE on November 16, 2018. On November 19, 2018, CSAAVE acknowledged receipt of that application and advised that the review process can take up to 45–60 days. Ashford therefore hopes to have a response from CSAAVE by late January.

Executed on December 7, 2018, in Washington, D.C.

/s/ Carter G. Phillips  
Carter G. Phillips

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of December 2018, I filed the foregoing motion and supporting documents with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Carter G. Phillips  
Carter G. Phillips