

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 797

(Senator Hester, *et al.*)

Education, Energy, and the Environment and
 Budget and Taxation

Ways and Means

**Education - Access to Attorneys, Advocates, and Consultants for Special
 Education Program and Fund - Established**

This bill establishes the Access to Attorneys, Advocates, and Consultants for Special Education (AAACSE) Program administered by the Maryland Volunteer Lawyers Service (MVLS) and the AAACSE Fund, administered by the Maryland State Department of Education (MSDE). The AAACSE Program directs resources and services to eligible students to provide access to legal, advocacy, and consultant services. Eligible students are those with a disability whose parent has (1) a household income not more than 150% of the MVLS guidelines and (2) made at least one attempt to resolve a disagreement with a public agency regarding the child’s special education services or program. Beginning in fiscal 2026, the Governor must include \$1.0 million to the AAACSE Fund in the annual budget bill. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: General fund expenditures increase by \$1.0 million annually beginning in FY 2025; first-year expenditures reflects contingent funding provided in the State budget as passed by the General Assembly, and out-year costs reflect the mandated appropriation. Special fund revenues and expenditures increase correspondingly. **This bill establishes a mandated appropriation beginning in FY 2026.**

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
GF Expenditure	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
SF Expenditure	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
Net Effect	(\$1.00)	(\$1.00)	(\$1.00)	(\$1.00)	(\$1.00)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: To the extent that the bill results in more families initiating due process complaints, local school systems may incur additional costs to handle the increase.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

AAACSE Fund

MVLS may use the AAACSE Fund only for (1) services provided to eligible students by attorneys, advocates, and consultants; (2) development and distribution of written informational materials for parents; (3) outreach and education activities; and (4) MSDE's and MVLS's administrative expenses. Excluding expenditures for administering the AAACSE Program, from the annual appropriation, it is the intent of the General Assembly that approximately 25% of the annual appropriation be used to provide representation to eligible students in due process hearings and 75% be used to provide consultation, representation, or advocacy of eligible students.

AAACSE Program

The AAACSE Program may serve only eligible students who meet at least one of a set of specified criteria. The bill requires MVLS to carry out specified actions in administering the AAACSE Program, including, in consultation with specified entities, developing and providing, or authorizing other nonprofit organizations to provide, training for advocates and consultants on State and federal special education law and procedures. An advocate or consultant may not participate in, or receive payment under, the AAACSE Program without completing the training.

A qualified attorney, advocate, or a consultant who is included on the referral list maintained by MVLS may receive the individual's customary rate, up to \$200 per hour, to provide services under the AAACSE Program. Funds received by a qualified attorney, advocate, or a consultant under the AAACSE Program do not need to be repaid to MVLS unless the eligible student is the prevailing party in a proceeding and fees have been awarded to the student. An eligible student may not receive more than \$20,000 in lifetime services under the program. MVLS may adopt policies and procedures to carry out provisions of the bill.

Notification Requirements

At the initial evaluation meeting for the purpose of discussing the identification, evaluation, educational program, or the provision of a free appropriate public education of a child with a disability, the parents of the child must be provided written information about the

AAACSE Program. If during an individualized education program (IEP) team meeting, a parent disagrees with the child's IEP or the special education services provided to the child, the IEP team must provide the parent with written information about the AAACSE Program. Except in cases of extenuating circumstances, five days prior to a scheduled IEP meeting, parents must be provided notification of the right of the parent to be accompanied to the meeting by any individual who has knowledge or expertise regarding the student, and written information about the AAACSE Program.

If a parent files a due process complaint against a public agency concerning the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education, MSDE must notify the parent about the AAACSE Program prior to mediation. Before conducting a due process hearing, a public agency must notify the parent about the AAACSE Program. Similarly, all public agencies must include information about the AAACSE Program in the parent's rights documents distributed to families in the IEP meetings and before mediation or due process hearings.

Reporting Requirements

A public agency must annually, for specified proceedings, collect specified information about the nature of the dispute and the involved student. MSDE must compile this information annually and submit a report to the General Assembly annually by November 1. MVLS must annually collect specified data related to money disbursed from and returned to the AAACSE Fund and annually report the compiled data to the General Assembly by October 1.

Current Law/Background: The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 year old, in accordance with an individualized family service plan (IFSP) or IEP specific to the individual needs of the child. An IFSP is for children with disabilities from birth up to age 3, and up to age 5 under Maryland's Extended IFSP Option if a parent chooses the option. An IEP is for students with disabilities age 3 through 21. Local school systems are required to make a free appropriate public education available to students with disabilities from age 3 through 21. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

An IEP is a written statement for each child with a disability that, among other things, must indicate the present levels of academic achievement and functional performance of a child, measurable academic and functional goals for the child, how the child's progress toward meeting these goals will be measured, and the special education and related services that are to be provided for the child. The parent of a child with a disability is a member of the

IEP team that is responsible for developing and reviewing a child’s IEP and for revisions to the IEP.

At the initial evaluation meeting, the parents of a child with a disability must be provided certain information, including (1) in plain language, a verbal and written explanation of the parents’ rights and responsibilities in the process and a program procedural safeguards notice; (2) written information that the parents may use to contact early intervention and special education family support services and staff members within the local school system and a brief description of the services provided by staff members; and (3) written information on the Special Education Ombudsman and toll-free telephone number. If a parent’s native language is not English, the information must be provided in the parent’s native language. The parents may request this information at any subsequent meeting. If a child who has an IEP developed in another school system moves to a different local school system, the new school system must provide the information in the first communication regarding the child’s IEP. Failure to provide information does not constitute grounds for a due process complaint.

“Public agency” means MSDE, a local school system, the Juvenile Services Education Program, or any State agency responsible for providing education to students with disabilities, including the Maryland School for the Blind and the Maryland School for the Deaf.

A parent of a child with a disability or a public agency may request mediation to resolve any disagreement regarding the child’s special education services or program, including mediation to resolve a due process complaint filed by a parent against a public agency. A parent of a child with disabilities may file a due process complaint with Office of Administrative Hearings (OAH) and the public agency. Similarly, the public agency may file a due process complaint with OAH and the parent. OAH appoints an administrative law judge to conduct a due process hearing. The decision of the administrative law judge must be made on substantive grounds based on whether a child has received a free appropriate public education.

Chapter 708 of 2023 authorizes a court to award reasonable attorney’s fees and related costs, including expert witness fees and costs, to the parent of a child with a disability, if the parent prevails in a proceeding that is held to resolve disputes about the identification, evaluation, or educational placements of children with disabilities or the provision of a free appropriate public education. However, such an award may not be made after the date a written offer of settlement is made to the parent, under certain conditions, unless the parent was substantially justified in rejecting the settlement offer.

According to its [website](#), MVLS directly helps Marylanders facing legal challenges, while also fighting to change systems that harm people living in or near poverty. MVLS

accomplishes this through *pro bono* representation, community engagement, and legislative and administrative advocacy.

State Fiscal Effect: General fund expenditures increase by \$1.0 million annually beginning in fiscal 2025, reflecting \$1.0 million in general funds provided for the AAACSE Program in the fiscal 2025 budget as passed by the General Assembly contingent on this legislation, and according to the bill's mandated appropriations to the AAACSE Fund. Special fund revenues and expenditures increase by \$1.0 million each beginning in fiscal 2026, assuming that the full appropriation is expended each year to provide services to eligible students.

One-time administrative costs for MSDE amounting to \$78,000 include costs for (1) changes to the MSDE on-line data management system, (2) updates to the Maryland Special Education Procedural Safeguards and Special Education Parent Information Series publications and translation of these into 26 languages, and (3) guidance and training for IEP teams in implementing the bill's requirements. It is assumed these costs are incurred in fiscal 2025, in anticipation of the AAACSE Program commencing in fiscal 2026, and are covered by the \$1.0 million in general funds provided in the fiscal 2025 State budget. MSDE can otherwise administer the fund with existing resources.

To the extent that the bill results in more families initiating due process complaints, MSDE may require additional staff in the future to handle the increase. Other State-level public agencies can handle the bill's provisions with existing resources. OAH does not anticipate increased expenditures under the bill.

Small Business Effect: Small businesses that provide relevant legal and consulting services may benefit.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 903 (Delegate Atterbeary, *et al.*) - Ways and Means.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State Department of Education; Maryland School for the Deaf; Baltimore County Public Schools; Prince George's County Public Schools; Maryland Volunteer Lawyers Service; Department of Legislative Services

Fiscal Note History:
rh/mcr

First Reader - February 19, 2024
Third Reader - March 20, 2024
Revised - Amendment(s) - March 20, 2024
Enrolled - April 18, 2024
Revised - Amendment(s) - April 18, 2024

Analysis by: Scott P. Gates

Direct Inquiries to:
(410) 946-5510
(301) 970-5510