



THE 853 COALITION

# *NYS COALITION OF 853 SCHOOLS*

*Testimony Presented By:  
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President, Board of Directors*

Before the:  
ASSEMBLY WAYS AND MEANS &  
SENATE FINANCE COMMITTEES

Joint Legislative Budget Hearing  
On Elementary and Secondary  
Education  
SFY 2023-2024

Wednesday, February 8, 2023

The New York State Coalition of 853 Schools

1 Steuben Place | Albany, NY 12207 | 518.453.1160 | [www.853coalition.org](http://www.853coalition.org)



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Thank you for the opportunity to address you today. My name is Ed Placke, I am the President of the Board of Directors of the New York State Coalition of 853 Schools (The Coalition), as well as the Executive Director of Green Chimney's Children's Services.

### **SUPPORT FOR STUDENTS WITH DISABILITIES IN 853 SCHOOLS**

To begin, I would like to express our membership's appreciation for your long-standing support of school age special education schools, otherwise known as "853 schools." While the funding for our schools is provided by the state outside of the budget process through an administrative rate process called the tuition rate methodology, it is because of the legislature's support that, after a number of years of zero percent growth to our funding, students with disabilities educated in 853 schools began to be supported on par with their peers attending public schools over a decade ago.

When the prior administration broke with past practice and failed to approve growth for our students on par with the public-school districts, this Legislative body responded again, and unanimously passed legislation to require that annual growth to the tuition rate methodology be authorized at the same level as growth provided to public school districts. While this legislation was ultimately vetoed by Governor Hochul, your leadership and support led to a historic 11% growth factor for the current school year.

Additionally, last session, the legislature passed legislation authorizing interim plus rates, which allows schools and programs capture that growth and make needed investments in our programs and students more fully. The Coalition notes that here, again, even though the bill was vetoed, your support led to a positive outcome. The Governor authorizes interim plus rates for the 2022-23 school year via the administrative tuition rate methodology process. We look for your continued advocacy in ensuring interim plus approval for the years ahead.

### **WORKFORCE CHALLENGES**

Like many other sectors, our schools are facing significant recruitment and retention challenges. The current tuition rate methodology does not support our schools in compensating our teachers and staff at the same or similar level as public school districts.

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This is compounded by the shortages in the workforce generally and shortages specifically in special education certification and in certain related service areas like speech language pathologists.

Our members report issues across the board in hiring appropriately certified teachers, but a number indicate significant issues specifically in recruiting special education teachers, math and science teachers and certified teaching assistants. A number of our providers recently reported vacancy rates among their teachers nearing 25%, and vacancy rates among teaching assistants of over 40%. Additionally, many of our schools report not being able to hire related service providers, instead having to contract out those services.

We simply cannot recruit and retain qualified certified teachers, teaching assistants, teacher aides and other clinical staff, given their ability to earn a higher salary and better benefits package in public schools.

For the upcoming school year, the Coalition requests a 12.1% growth factor to address the significant inflationary factors that the entire country is seeing, and to ensure our programs are able to increase the compensation of our teachers, clinicians, and staff so we can deliver the educational opportunity our students deserve.

### **TUITION RATE METHODOLOGY REFORM**

One-time investments will not strengthen the fiscal viability of our schools, we need comprehensive tuition rate methodology reform and a commitment to continued growth that demonstrates a commitment to all public school students with disabilities, whether they attend a district school or an 853 school.

Our Coalition has long advocated for reforms to the special education tuition rate methodology, which is currently unable to appropriately support the education and related services our students are entitled to and deserve.

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We are thrilled to see Governor Hochul include \$2.5 million in her Executive Budget proposal for the State Education Department to study and design a new rate-setting methodology. The Coalition fully supports the inclusion of the funding in the enacted budget and the Governor's commitment to reforming the methodology. However, we do have some concerns with the restrictive appropriation language that would prevent meaningful change.

We look forward to working with the Administration and the Legislature to ensure the enacted budget provides the investments needed to appropriately support the education and related services our students are entitled to and deserve. The investment must also come with a commitment to work closely with the special education providers, our schools, in the development of a new methodology and a specific timeframe for the adoption and implementation of reforms. Our students' needs must be met through a strong partnership with the state in addressing under- funding and the challenges inherent in the tuition rate methodology.

### **IMD**

The Governor's budget also proposes funding that sets the state further down its path on a proposal to submit a waiver related to the federal Institutions for Mental Disease (IMD) Exclusion, that have intersected with child welfare since the passage of the federal Family First Act. According to the Centers for Medicare and Medicaid Services (CMS), residential foster care facilities (Qualified Residential Treatment Programs, or QRTPs) may be classified as IMDs if they serve more than 16 children. As a result, thousands of children and youth placed in a QRTP that is designated an IMD will not be able to access Federal Financial Participation in Medicaid for their medical care (even though children and youth in foster care are categorically eligible for Medicaid).

The NYS Department of Health has indicated to the federal Government plans to advance a waiver amendment application that would allow for federal funding for children and youth in these settings for the waiver period, with both short- and long-term conditions. The Executive Budget proposal includes funding that appears to be geared at meeting some of those short-term requirements.

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The Coalition, often the education provider for children and youth in residential foster care placements, continues to have the position that the best solution to the QRTP-IMD issue is the passage of federal statute that will resolve the QRTP/IMD exclusion intersection, and that the waiver option is not a long-term solution for the children and youth in foster care in NYS.

To continue prioritizing children's best interests, and to better achieve the goals of the Family First Act, it is essential that children and youth in foster care residing in QRTPs have continued, consistent federal support of their health care costs and access to quality educational programming. The state must engage in advocacy for passage of federal statute that will allow children and youth in foster care to continue receiving full Federal Financial Participation for their medical and behavioral health care.

In the meantime, we request that the Legislature ensure that the state think through all of the sectors that could be impacted by submission of a waiver application relating to QRTP settings, include all appropriate state agencies in the development of any such application, and ensure feedback from a wide variety of stakeholders.

### **SUMMARY**

The NYS Coalition of 853 Schools Supports:

- Continuation of interim plus rates for the 2023-2024 school year and the years ahead, to ensure that schools may realize tuition rate growth;
- A 12.1% growth factor to the special education tuition rate methodology, to address the significant inflationary factors that the entire country is seeing, and to ensure our programs are able to increase the compensation of our teachers, clinicians, and staff so we can deliver the educational opportunity our students deserve;
- \$2.5 million as proposed in the Executive Budget for the State Education Department to study and design a new rate-setting methodology, with a commitment to work closely with the special education providers, our schools, in the development of a new methodology and a specific timeframe for the adoption and implementation of reforms.
- Ensuring a long-term solution to the QRTP-IMD issue through state advocacy for passage of federal statute that will resolve the QRTP/IMD exclusion intersection and allow children and youth in foster care to continue receiving full Federal Financial Participation

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for their medical and behavioral health care.

## **CONCLUSION**

Once again, thank you for your support of our students, families, and staff. Your advocacy remains critical today. We look forward to working with you to advance proposals in this year's budget that allow for appropriate investment in our students' needs, and appropriately compensated certified teachers, staff, and related services professionals, and that will finally put us on a path to real tuition rate methodology reform. Thank you.

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