

**ITEM 4**

**PROPOSED DECISION AND PARAMETERS AND GUIDELINES**

Education Code Section 35292.6

Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367)

*Public School Restrooms: Menstrual Products*

22-TC-04

Period of Reimbursement begins January 1, 2022

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## Exhibit A

March 26, 2024

Mr. Chris Hill  
Department of Finance  
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Sacramento, CA 95814

Mr. Arthur Palkowitz  
Law Offices of Arthur Palkowitz  
12807 Calle de la Siena  
San Diego, CA 92130

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

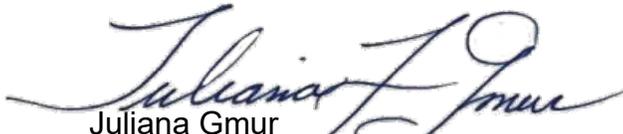
**Re: Decision**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664, Sections 1, 3 (AB 367); Education Code Section  
35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

Dear Mr. Hill and Mr. Palkowitz:

On March 22, 2024, the Commission on State Mandates adopted the Decision approving the Test Claim on the above-captioned matter.

Sincerely,



Juliana Gmur  
Acting Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM

Education Code Section 35292.6

Statutes 2021, Chapter 664, Sections 1  
and 3 (AB 367), Effective July 1, 2022

Filed on May 12, 2023

Hesperia Unified School District, Claimant

Case No.: 22-TC-04

*Public School Restrooms: Menstrual  
Products*

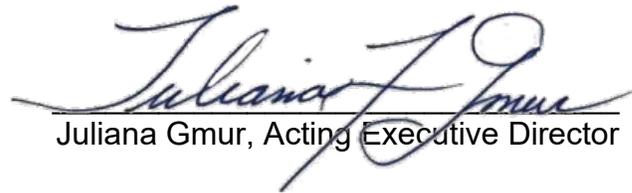
DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted March 22, 2024)*

*(Served March 26, 2024)*

**TEST CLAIM**

The Commission on State Mandates adopted the attached Decision on  
March 22, 2024.



Juliana Gmur, Acting Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

<p>IN RE TEST CLAIM</p> <p>Education Code Section 35292.6</p> <p>Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367), Effective July 1, 2022</p> <p>Filed on May 12, 2023</p> <p>Hesperia Unified School District, Claimant</p>	<p>Case No.: 22-TC-04</p> <p><i>Public School Restrooms: Menstrual Products</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted March 22, 2024)</i></p> <p><i>(Served March 26, 2024)</i></p>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on March 22, 2024. Dr. George Landon and Arthur Palkowitz appeared on behalf of the claimant. Martina Dickerson and Chris Ferguson appeared on behalf of the Department of Finance.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to approve the Test Claim by a vote of 6-0, as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	Yes
Deborah Gallegos, Representative of the State Controller	Yes
Jennifer Holman, Representative of the Director of the Office of Planning and Research	Yes
Renee Nash, School District Board Member	Yes
William Pahland, Representative of the State Treasurer, Vice Chairperson	Yes
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	Yes

**Summary of the Findings**

This Test Claim alleges new state-mandated activities and costs arising from Statutes 2021, chapter 664 (the test claim statute), the Menstrual Equity for All Act of 2021, that

repeals and adds section 35292.6 to the Education Code, effective January 1, 2022, and operative July 1, 2022. The test claim statute requires, on or before the start of the 2022-2023 school year, “a public school, including a school operated by a school district, county office of education, or charter school,”<sup>1</sup> that maintains any combination of classes from grade 6 to grade 12, inclusive, to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom, with an adequate supply of menstrual products, defined as tampons and menstrual pads, at all times, and prohibits schools from charging for any menstrual products provided to pupils.<sup>2</sup> The test claim statute also requires these schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.<sup>3</sup>

The Commission finds that the Test Claim was timely filed based on the date the claimant first incurred increased costs to comply with the test claim statute.<sup>4</sup> The potential reimbursement period begins on the statute’s effective date of January 1, 2022.

The Commission further finds that the test claim statute imposes a reimbursable state-mandated program on school districts, including county offices of education.<sup>5</sup> The requirements imposed by the test claim statute are new. Under prior law, schools that maintained any combination of grades 6 through 12, inclusive and met a 40-percent pupil poverty threshold (i.e., schools required to operate a schoolwide program pursuant to 20 U.S.C. § 6314(a)(1)(A)) were required to stock at least 50 percent of their restrooms with an adequate supply of feminine hygiene products (defined as sanitary napkins and tampons) free of charge.<sup>6</sup>

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<sup>1</sup> Education Code section 35292.6(a) (Stats. 2021, ch. 664).

<sup>2</sup> Education Code section 35292.6(a)-(b) (Stats. 2021, ch. 664).

<sup>3</sup> Education Code section 35292.6 (c) (Stats. 2021, ch. 664, sec. 3).

<sup>4</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 17, paragraph 1 (Declaration of Dr. George Landon, Deputy Superintendent of Business Services), 23 (invoice).

<sup>5</sup> Government Code section 17519 defines “school district” for purposes of claiming reimbursement under article XIII B, section 6 of the California Constitution as “any school district. . . or county superintendent of schools”. The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.)

<sup>6</sup> Former Education Code section 35292.6, as enacted by Statutes 2017, chapter 687.

The test claim statute now requires *all* public schools that maintain any combination of grades 6 to 12, inclusive (not only those that met the 40-percent pupil poverty threshold under prior law) to stock menstrual pads and tampons in all women’s restrooms and all-gender restrooms, and at least one men’s restroom, rather than in only 50 percent of their restrooms. For schools that met the 40-percent pupil poverty threshold under prior law, the number of restrooms these schools are required to stock is increased to accommodate a new group of pupils and provide a service to the public. The Legislature enacted the test claim statute to expand access to menstrual products to “transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products” and to “ensure California provides equal access to education. . . irrespective of gender.”<sup>7</sup> Thus, for the 40-percent pupil poverty schools, the number of restrooms now required to be stocked to serve this additional pupil population has increased to the sum of all women’s restrooms and all-gender restrooms and at least one men’s restroom, minus 50 percent of all school restrooms that were required to be stocked under prior law.

The requirement to stock the school restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms and at least one men’s restroom is new for all other schools maintaining grades 6 to 12 that *did not* meet the 40-percent pupil poverty threshold under prior law.

In addition, the requirement to post a notice, to include the statutory text and contact information for a designated individual responsible for maintaining the requisite supply of menstrual products, in a prominent and conspicuous location in every restroom required to stock menstrual products, is also new for all schools maintaining any combination of grades 6 to 12, inclusive.<sup>8</sup>

The Commission finds that these new requirements are mandated by the state. The plain language of the test claim statute states that the schools “*shall* stock . . . an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom” and “*shall* post a notice . . .”<sup>9</sup>

The mandated requirements are also uniquely imposed on government and provide a service to the public. According to the legislative findings and declarations, the statute promotes “gender equity for women, girls, transgender, or gender nonconforming

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<sup>7</sup> Statutes 2021, chapter 664, section 1.

<sup>8</sup> Education Code section 35292.6(c), as added by Statutes 2021, chapter 664.

<sup>9</sup> Emphasis added. According to Education Code section 75, “‘Shall’ is mandatory and ‘may’ is permissive.” See also, *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815, where the court held that legal compulsion occurs when a statute or executive action uses mandatory language that “ ‘require[s]’ or ‘command[s]’ ” a local entity to participate in a program or service. [citations omitted] [construing the term “mandates” in art. XIII B, § 6 to mean “ ‘orders’ or ‘commands’ ”.]

people who may also menstruate; decreasing emotional distress, physical infection, and disease; basic educational equity; preventing or reducing absenteeism and significant performance gaps;” as well as “social disengagement, feelings of alienation, and adverse outcomes.”<sup>10</sup>

Finally, based on evidence in the record,<sup>11</sup> the Commission finds that the test claim statute imposes increased actual costs mandated by the state within the meaning of Government Code section 17514, and that no reimbursement exceptions in Government Code section 17556 apply.

Therefore, the Commission approves this Test Claim for the activities listed in the conclusion beginning January 1, 2022.

## COMMISSION FINDINGS

### I. Chronology

- |            |   |
|------------|---|
| 01/01/2022 | Education Code section 35292.6, Statutes 2021, chapter 664 (AB 367), became effective, and was operative on July 1, 2022. |
| 05/12/2023 | The claimant filed the Test Claim. <sup>12</sup>  |
| 07/20/2023 | The Department of Finance (Finance) filed comments on the Test Claim. <sup>13</sup>                                       |
| 08/17/2023 | The claimant filed rebuttal comments. <sup>14</sup>   |
| 01/05/2024 | Commission staff issued the Draft Proposed Decision. <sup>15</sup>  |
| 01/26/2024 | Finance filed comments on the Draft Proposed Decision. <sup>16</sup>  |
| 01/26/2024 | The claimant filed comments on the Draft Proposed Decision. <sup>17</sup>   |

### II. Background

The test claim statute, the Menstrual Equity for All Act of 2021 (Stats. 2021, ch. 664) repeals and adds section 35292.6 to the Education Code.

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<sup>10</sup> Statutes 2021, chapter 664, section 1.

<sup>11</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

<sup>12</sup> Exhibit A, Test Claim, filed May 12, 2023.

<sup>13</sup> Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023.

<sup>14</sup> Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023.

<sup>15</sup> Exhibit D, Draft Proposed Decision, issued January 5, 2024.

<sup>16</sup> Exhibit E, Finance’s Comments on the Draft Proposed Decision, filed January 26, 2024.

<sup>17</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, filed January 26, 2024.

### **A. The Test Claim Statute, the Menstrual Equity for All Act.**

The test claim statute adds section 35292.6 to the Education Code, with an operative date of July 1, 2022, to require “a public school operated by school districts, county offices of education, or charter school maintaining any combination of classes from grades 6 through 12, inclusive,” to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom with menstrual products (defined as tampons and menstrual pads), free of cost to the pupils, on or before the start of the 2022-2023 school year. The test claim statute also requires these schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. This notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products. These requirements are in section three of the test claim statute that states:

- (a) On or before the start of the 2022–23 school year, a public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, shall stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom.
- (b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils.
- (c) A public school described in subdivision (a) shall post a notice regarding the requirements of this section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost, pursuant to this section. This notice shall include the text of this section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.
- (d) For purposes of this section, “menstrual products” means menstrual pads and tampons for use in connection with the menstrual cycle.
- (e) This section shall become operative on July 1, 2022.<sup>18</sup>

Section 2 of the test claim statute repeals former Education Code section 35292.6, (Stats. 2017, ch. 687) which required schools that maintained any combination of classes from grades 6 through 12, inclusive, and that met the 40-percent pupil poverty threshold of Section 6314(a)(1)(A) of Title 1 of the United States Code, to stock at least 50 percent of the school’s restrooms with feminine hygiene products, defined as sanitary napkins and tampons used in connection with the menstrual cycle, and forbade

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<sup>18</sup> Education Code section 35292.6 (Stats 2021, ch. 664).

schools from charging for any menstrual products. The test claim statute made this former section inoperative on June 30, 2022, and repealed it as of January 1, 2023, replacing it with the new section 35292.6 quoted above, operative July 1, 2022. The repealed statute was the subject of the Commission's Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01,<sup>19</sup> with a period of reimbursement beginning January 1, 2018.

Section 1 of the test claim statute names the Act and lists the following Legislative findings and declarations:

- (a) This act shall be known, and may be cited, as the Menstrual Equity for All Act of 2021.
- (b) The Legislature finds and declares all of the following:
  - (1) California recognizes that access to menstrual products is a basic human right and is vital for ensuring the health, dignity, and full participation of all Californians in public life.
  - (2) California has an interest in promoting gender equity, not only for women and girls, but also for transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products.
  - (3) Inadequate menstrual support is associated with both health and psychosocial issues, particularly among low-income people. A lack of access to menstrual products can cause emotional distress, physical infection, and disease.
  - (4) Equal opportunity to education is a fundamental right recognized by the California Constitution. Section 5 of Article IX of, subdivision (a) of Section 7 of Article I of, and subdivision (a) of Section 16 of Article IV of, the California Constitution require the state to maintain and operate the public school system in a manner that provides basic educational equity to students.
  - (5) California has an interest in creating safe, welcoming, and inclusive schools for all students. Subdivision (b) of Section 201 of the Education Code, in particular, requires all preschool, elementary, and secondary schools to affirmatively combat racism, sexism, and other forms of bias.
  - (6) Research shows that students lacking access to menstrual products experience higher rates of absences and are less able to focus and engage in the classroom. Absenteeism can lead to

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<sup>19</sup> Exhibit G (3), Commission on State Mandates, Test Claim Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted May 24, 2019, [https://csm.ca.gov/decisions/18-tc-01\\_decision.pdf](https://csm.ca.gov/decisions/18-tc-01_decision.pdf) (accessed on September 12, 2023).

significant performance gaps and is linked to social disengagement, feelings of alienation, and adverse outcomes even into adulthood.

- (7) The provision of menstrual products in schools helps ensure California provides equal access to education and enables students to reach their full potential, irrespective of gender.
  - (8) Expanding student access to menstrual products can result in increased attendance rates. After the City of New York passed a law providing free menstrual products to students, participating schools saw a 2.4 percent increase in attendance.
  - (9) Expanding student access to menstrual products can also result in cost savings due to increased funding associated with student attendance and reduced administrative costs and expenses from charging for menstrual products.
- (c) It is the intent of the Legislature that this act provide for the health, dignity, and safety of menstruating students at every socioeconomic level, normalize menstruation among all genders, and foster gender competency in California schools, colleges, and universities.

In the legislative history, the bill's author states in part:

Having convenient and free access to menstrual products will help students in our schools, similar to the way that toilet paper is provided to respond to routine biological functions. By providing menstrual products in schools, California helps ensure its students have equal access to education and are empowered to reach their full potential, irrespective of their gender or economic status.<sup>20</sup>

The legislative history also quotes a 2019 Harris Interactive poll of 2,000 United States teens aged 13 to 19 commissioned by the nonprofit organization PERIOD and a menstrual products company that found:

- 1) Two-thirds of teens have felt stress due to lack of access to period products.
- 2) 20% have struggled to afford period products or were not able to purchase them at all.
- 3) 61% have worn a tampon or pad for more than four hours because they did not have enough access to period products (which puts them at risk of infection and TSS).
- 4) 84% have either missed class time or know someone who missed class time because they did not have access to period products.

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<sup>20</sup> Exhibit G (6), Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 367 (2021-2022), as amended August 26, 2021, page 5.

- 5) 25% have missed class because of lack of access to period products.
- 6) 83% think lack of access to period products is an issue that is not talked about enough.
- 7) 66% do not want to be at school when they are on their period.
- 8) 69% feel embarrassed when they have to bring period products to the bathroom.
- 9) The majority (51%) of students feel like their school does not care about them if they do not provide free period products in their bathrooms.
- 10) 51% have missed at least part of a class or class period due to menstruation symptoms such as cramps.<sup>21</sup>

The Assembly Appropriations Committee assessed the test claim statute's fiscal impact based in part on the Commission's December 2020 Statewide Cost Estimate for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01 (former Ed. Code, §35292.6, Stats. 2017, ch. 687):

One-time Proposition 98 GF costs of about \$2 million to LEAs to install or modify menstrual product dispensers and ongoing Proposition 98 GF costs of about \$1.3 million to provide free menstrual products. This estimate use [sic] assumptions from the Commission on State Mandates (CSM) evaluation of the cost per female student at certain K-12 schools to provide free menstrual products in 50% of restrooms, as required by current law (described in more detail below). According to that evaluation, costs are \$3.70 per female student one-time to install or retrofit menstrual product dispensers and about \$2.36 per female student annually to provide free menstrual products. However, the costs of this bill would likely be slightly higher because it requires all gender restrooms and one men's restroom to supply free menstrual products. Accordingly, this analysis increases by 10% the amount of one-time and ongoing costs, though there may be additional costs of an unknown amount.

According to data from the California Department of Education, about 1.2 million females enrolled in grades 6-12 in the 2018-19 school year. Subtracting the number of students already receiving free menstrual products through existing law, about 500,000 female students remain.<sup>22</sup>

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<sup>21</sup> Exhibit G (2), Assembly Rules Committee, Assembly Concurrence in Senate Amendments, Analysis of AB 367 (2021-2022), as amended August 26, 2021, pages 1-2.

<sup>22</sup> Exhibit G (1), Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2.

**B. In Addition to General Restroom Maintenance, Prior Law Required Public Schools that Maintained Any of Grades 6 to 12, Inclusive, to Stock 50 Percent of the School’s Restrooms with Feminine Hygiene Products if the School Met a 40-Percent Pupil Poverty Threshold.**

Prior law required public schools to stock at least 50 percent of the schools’ restrooms with feminine hygiene products (defined as tampons and sanitary napkins), if the school maintained any combination of classes from grades 6 to 12, inclusive, and met the 40-percent pupil poverty threshold of Section 6314(a)(1)(A) of Title 1 of the United States Code.<sup>23</sup> This statute was made inoperative and replaced by the test claim statute effective July 1, 2022. The former statute was the subject of the Commission’s Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, which was approved for reimbursement beginning January 1, 2018.<sup>24</sup>

Preexisting law requires that for grades kindergarten through 12, schools must ensure that restrooms are kept open during school hours and “shall at all times be maintained and cleaned regularly, fully operational and stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.”<sup>25</sup> This statute was recently amended by newly-enacted Senate Bill 760, approved by the Governor on September 23, 2023, requiring that every K-12 schoolsite have at least one all-gender restroom by July 1, 2026.<sup>26</sup>

Education Code section 17002 defines the “Good Repair” standard for school facilities,<sup>27</sup> including school restrooms, to mean clean, safe, and functional as determined pursuant to the Facility Inspection Tool (FIT) created by the Office of Public School Construction (OPSC) or a local evaluation instrument that meets the same criteria.<sup>28</sup> The minimum restroom evaluation criteria require that the restrooms and

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<sup>23</sup> Education Code section 35292.6, as added by Statutes 2017, chapter 687 (AB 10).

<sup>24</sup> Exhibit G (3), Commission on State Mandates, Test Claim Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted May 24, 2019, [https://csm.ca.gov/decisions/18-tc-01\\_decision.pdf](https://csm.ca.gov/decisions/18-tc-01_decision.pdf) (accessed on September 12, 2023), footnote 55, pages 10-11.

<sup>25</sup> Education Code section 35292.5(a)(1).

<sup>26</sup> Education Code section 35292.5(b) (Stats 2023, ch. 227).

<sup>27</sup> Education Code section 17002 was pled in *Williams Case Implementation I, II, III*, 05-TC-04; 07-TC-06; 08-TC-01 and was denied by the Commission on the ground that the requirement to maintain schools in good repair is not new but is a longstanding requirement of statutory and common law, and the statute’s definition of “good repair” only clarified existing law. In addition, all the activities claimed in relation to school facilities programs utilizing the section 17002 good repair definition were voluntary. Commission on State Mandates, Test Claim Decision on *Williams Case Implementation I, II, III*, 05-TC-04, 07-TC-06, 08-TC-01, adopted December 7, 2012, <https://csm.ca.gov/decisions/506.pdf> (accessed on December 6, 2023), pages 48-51 .

<sup>28</sup> Education Code section 17002(d)(1).

restroom fixtures “(i) are functional, (ii) appear to be maintained and stocked with supplies regularly, (iii) appear to be accessible to pupils during the schoolday, and (iv) appear to be in compliance with Section 35292.5.”<sup>29</sup> The FIT developed by the OPSC as revised in 2022 includes evaluating the degree to which restrooms are maintained and cleaned regularly; are fully operational; are stocked with toilet paper, soap, and paper towels; and are open during school hours.<sup>30</sup>

Education Code section 33126 requires that the safety, cleanliness, and adequacy of school facilities, including school restrooms, including any needed maintenance to ensure good repair as specified in sections 17014, 17032.5, 17070.75(a), and 17089(b), be reported on the School Accountability Report Card (SARC).<sup>31</sup> “Good repair” for the purpose of SARC has the same meaning as specified in Section 17002(d).<sup>32</sup> The SARCs must be prepared annually and disseminated to the public.<sup>33</sup>

As a part of the Local Control Funding Formula,<sup>34</sup> Education Code section 52060 incorporated the requirement to maintain schools in “good repair” as defined in Education Code section 17002(d)(1) into one of the eight state priorities, the “Priority 1/Basic Services,”<sup>35</sup> and requires, to the extent practicable, that the data in the Local Control Accountability Plan be reported in a manner consistent with how information is reported on the SARC.<sup>36</sup>

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<sup>29</sup> Education Code section 17002(d)(1)(M).

<sup>30</sup> Exhibit G (5), Office of Public School Construction (OPSC), Facility Inspection Tool (FIT), revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on September 5, 2023), page 4.

<sup>31</sup> Education Code section 33126(b)(8). Education Code section 33126(b) (as amended by Stats. 2004, ch. 900 § 10 (SB 550)) was pled in *Williams Case Implementation I, II, III*, 05-TC-04; 07-TC-06; 08-TC-01 and was partially approved by the Commission, including to report any needed maintenance to ensure good repair on the SARC. See Commission on State Mandates, Test Claim Decision on *Williams Case Implementation I, II, III*, 05-TC-04, 07-TC-06, 08-TC-01, adopted December 7, 2012, <https://csm.ca.gov/decisions/506.pdf> (accessed on November 29, 2023).

<sup>32</sup> Education Code section 17014(d).

<sup>33</sup> Education Code section 33126.

<sup>34</sup> Education Code section 42238.02 is the local control funding formula that establishes grade span adjusted base grant funding for average daily attendance for school districts with supplemental and concentration grant add-ons for each school district’s percentage of unduplicated count for English Learners, free and reduced-price meal eligible pupils and foster youth pupils.

<sup>35</sup> Education Code section 52060(a)-(d).

<sup>36</sup> Education Code section 52060(a)-(d). The governing boards of school districts are required to adopt a three-year Local Control Accountability Plan (LCAP), using a template adopted by the state board, describing annual goals for all pupils and each

In addition, preexisting law requires that pupils “be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identities, irrespective of the gender listed on the pupils’ records.”<sup>37</sup>

### III. Positions of the Parties

#### A. Hesperia Unified School District

The claimant alleges that the test claim statute constitutes a reimbursable state-mandated program that requires performing the following new activities:

- (i) Developing and implementing internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products.
- (ii) Training certificated, classified and other personnel to administer the availability of menstrual products in the district’s restrooms.
- (iii) Purchasing and installing dispensers in the schools and campus restrooms.
- (iv) Purchasing and stocking the schools and campus restrooms with menstrual products at all times.<sup>38</sup>

The test claim narrative also recognizes the requirement to post a notice in the restrooms regarding the availability of the menstrual products.<sup>39</sup>

The claimant submitted a declaration signed under penalty of perjury by the District’s Deputy Superintendent of Business Services, identifying costs of \$43,625.73 for the 2022-2023 school year to comply with the test claim statute. This includes \$37,442.05 for dispensers and \$3,299.92 for installation, and \$2,883.76 for menstrual products.<sup>40</sup> The claimant further alleges costs of \$2,883.76 for the 2023-2024 school year and estimates \$5 million in statewide costs.<sup>41</sup>

In response to arguments by Finance, the claimant states that the test claim statute requires it to install dispensers in 100 additional restrooms, for which it incurred increased costs. The claimant also says that it removed specified costs of \$365.45 for “Kleenex” products from its claim.<sup>42</sup> Further, the claimant maintains that the Parameters and Guidelines for Test Claim *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, authorize reimbursement for dispensers, but states that dispenser

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subgroup, including the low-income subgroup, and specific actions the districts will take each year to achieve the goals identified in the LCAP for each of the state priorities.

<sup>37</sup> Education Code section 221.5 (Stats. 2014, ch. 71).

<sup>38</sup> Exhibit A, Test Claim, filed May 12, 2023, page 12.

<sup>39</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 6, 11.

<sup>40</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

<sup>41</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

<sup>42</sup> Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023, page 2.

reimbursement may be decided during the Parameters and Guidelines process.<sup>43</sup> Regarding the K-12 Mandate Block Grant that provided reimbursement for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, the claimant notes that it covers approximately 49 mandates and is insufficient for the increased cost of this mandate.<sup>44</sup> Finally, the claimant objects to comments filed by Finance on the basis that they do not comply with sections 1183.2 and 1187.5 of the Commission’s regulations because they include representations of fact that are not signed under penalty of perjury and are not supported by documentary evidence, so according to the claimant, the Commission should disregard them.<sup>45</sup>

In comments on the Draft Proposed Decision, the claimant, in response to Finance’s comments on the Draft Proposed Decision, withdraws its request for reimbursement for the following activities:

- (i) Developing and implementing internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products;
- (ii) Training certificated, classified and other personnel to administer the availability of menstrual products in the district’s restrooms.<sup>46</sup>

The claimant notes that Finance fails to provide evidence supporting its concerns with the costs identified in the Test Claim and asserts that the claimant’s submitted costs meet the threshold to approve the Test Claim and that other cost issues may be addressed during the parameters and guidelines process. The claimant calls Finance’s concerns regarding overstated costs in the test claim “speculative.” Finally, the claimant repeats its argument that Finance’s comments do not comply with sections 1183.2 and 1187.5 of the Commission’s regulations because they include representations of fact that are not signed under penalty of perjury and are not supported by documentary evidence so the Commission should disregard them.<sup>47</sup>

## **B. Department of Finance**

Finance raises concerns that the costs identified in the Test Claim may be overstated and argues that the Commission should deny reimbursement absent evidence that the costs are required by the plain language of the test claim statute or are reasonably necessary to comply with the mandate.<sup>48</sup> Specifically, Finance maintains that the test claim statute does not require installing dispensers for the menstrual products, but admits that they may be reasonable if installed on a one-time basis, and if the claimant

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<sup>43</sup> Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023, pages 2-3.

<sup>44</sup> Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023, page 3.

<sup>45</sup> Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023, page 3.

<sup>46</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, filed January 26, 2024, page 1.

<sup>47</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, filed January 26, 2024, pages 1-2.

<sup>48</sup> Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 1.

supplies sufficient evidence. Finance also asserts that menstrual products are not required in more than one men’s restroom or in staff restrooms or in school restrooms not required by the test claim statute.<sup>49</sup> And Finance points out that prior law (AB 10, former Ed. Code, §35292.6, Stats. 2017, ch. 687) required schools that met a 40-percent pupil poverty threshold to stock at least 50 percent of restrooms with menstrual products, so it is unclear whether the claimant met these AB 10 requirements, which would diminish the need to install additional dispensers to comply with the test claim statute.<sup>50</sup>

According to Finance, the claimant should provide evidence of the number of its school restrooms that are eligible under the test claim statute, and an explanation of the number of dispensers purchased, including whether the restroom was already equipped with a dispenser and if so, why it was insufficient to comply with the mandate.<sup>51</sup> Finance also questions some of the claimant’s listed costs, such as for “sanitaire” and “Kleenex,” arguing that these should be denied as not complying with the test claim statute.<sup>52</sup> In addition, Finance states that the claimant should provide justification explaining whether any of the claimed costs were previously resolved through the *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01 mandate and subsequent K-12 Mandates Block Grant Adjustment.<sup>53</sup> Finance also disputes the claim to develop and implement policies and provide training for the purchase, installation, stocking, and administration of menstrual products, arguing that these are included within the existing activities of a school district under Education Code section 35292.5, which requires schools to “maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap and paper towels or functional hand dryers.” Finance also “believes that the claimant should remove these activities from the test claim entirely, as they are not necessary to implement the provisions of AB 367.”<sup>54</sup>

In comments on the Draft Proposed Decision, Finance again raises concerns regarding reimbursement for developing and implementing policies and providing training related to the purchase, installation, stocking and administration of menstrual products. Finance argues that these are within a district’s existing activities, “as shown by the fact that no costs are reflected in the test claim.”<sup>55</sup> Finance repeats its argument that Education Code section 35292.5 requires schools to maintain clean, fully operational restrooms stocked with toilet paper, soap and paper towels or functional hand dryers. And Finance points out that the Commission’s Parameters and Guidelines Decision for

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<sup>49</sup> Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 2.

<sup>50</sup> Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 2.

<sup>51</sup> Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 2.

<sup>52</sup> Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, pages 2-3.

<sup>53</sup> Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 3.

<sup>54</sup> Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 3.

<sup>55</sup> Exhibit E, Finance’s Comments on the Draft Proposed Decision, filed January 26, 2024, page 1.

18-TC-01 on *Feminine Hygiene Products* denied proposed costs related to training and developing policies and procedures because there was no evidence that they were reasonably necessary to comply with the mandate. Finance urges the Commission to deny these activities in this Test Claim.<sup>56</sup>

Finance also continues to be concerned with the costs identified because it is unclear what additional funding is needed to comply with this mandate that was not previously resolved in the 18-TC-01 mandate and subsequent K-12 Mandate Block Grant funding.<sup>57</sup>

Finally, Finance expresses concerns regarding overstated costs for the additional 100 dispensers identified in the Test Claim because it is unclear whether they would all be required to comply with this mandate. Finance maintains that reimbursement is not required to install dispensers in more than one men's restroom or staff restrooms or school restrooms not required by statute, or to replace, repair or retrofit dispensers already installed in the restrooms without sufficient justification.<sup>58</sup> According to Finance,

[I]f the Claimant provides sufficient evidence, the purchase and installation of menstrual product dispensers, or other distribution devices, for every women's and all-gender restrooms, and at least one men's restroom, may be reasonable on a one-time basis to ensure statutory requirements set by Education Code section 35292.6 are met.<sup>59</sup>

#### **IV. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."<sup>60</sup> Thus, the subvention

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<sup>56</sup> Exhibit E, Finance's Comments on the Draft Proposed Decision, filed January 26, 2024, page 1.

<sup>57</sup> Exhibit E, Finance's Comments on the Draft Proposed Decision, filed January 26, 2024, page 1.

<sup>58</sup> Exhibit E, Finance's Comments on the Draft Proposed Decision, filed January 26, 2024, page 2.

<sup>59</sup> Exhibit E, Finance's Comments on the Draft Proposed Decision, filed January 26, 2024, page 2.

<sup>60</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>61</sup>

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>62</sup>
2. The mandated activity constitutes a “program” that either:
  - a. Carries out the governmental function of providing a service to the public; or
  - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.<sup>63</sup>
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>64</sup>
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>65</sup>

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>66</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>67</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the

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<sup>61</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>62</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>63</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

<sup>64</sup> *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

<sup>65</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>66</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

<sup>67</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>68</sup>

**A. The Test Claim Statute Was Timely Filed with a Potential Period of Reimbursement Beginning January 1, 2022.**

Government Code section 17551 states that Test Claims must be filed “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”<sup>69</sup> Section 1183.1(c) of the Commission’s regulations defines “12 months” for purposes of filing a test claim as “365 days.”<sup>70</sup>

The test claim statute has an effective date of January 1, 2022, and an operative date of July 1, 2022.<sup>71</sup> The Legislature often postpones the operation of a statute until a later date to allow “persons and agencies affected by it to become aware of its existence and to comply with its terms.”<sup>72</sup> Here, the test claim statute states that the restrooms must be stocked “[o]n or before the start of the 2022–23 school year.”<sup>73</sup>

The Test Claim was filed on May 12, 2023,<sup>74</sup> which is later than 12 months following the statute’s effective date.

Government Code section 17551(c) also allows a timely test claim filing “within 12 months of incurring increased costs as a result of a statute or executive order.” In this case, the claimant filed a declaration signed under penalty of perjury by the District’s Deputy Superintendent for Business Services that declares, “I have personal knowledge of the actual and estimated costs incurred by the District for the Public School Restrooms (“PSR”) Menstrual Products program *commencing on July 1, 2022.*”<sup>75</sup> The test claim also includes invoices for the purchase of menstrual products for the district’s schools, with the earliest invoice dated August 1, 2022 for the purchase of menstrual products for Sultana High School.<sup>76</sup> Based on the May 12, 2023 Test Claim filing date, which is within 12 months of incurring increased costs as a result of a statute from either

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<sup>68</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

<sup>69</sup> Government Code section 17551(c).

<sup>70</sup> California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018.)

<sup>71</sup> Education Code section 35292.6(e), as amended by Statutes 2021, chapter 664, section 3.

<sup>72</sup> *Preston v. Board of Equalization* (2001) 25 Cal.4th 197, 223.

<sup>73</sup> Education Code section 35292.6 (Stats. 2021, ch. 664).

<sup>74</sup> Exhibit A, Test Claim, filed May 12, 2023, page 1.

<sup>75</sup> Exhibit A, Test Claim, filed May 12, 2023, page 17, paragraph 1 (Declaration of Dr. George Landon, Deputy Superintendent of Business Services), emphasis added.

<sup>76</sup> Exhibit A, Test Claim, filed May 12, 2023, page 23.

July 1, 2022 (as declared under penalty of perjury), or August 1, 2022 (the date of the earliest invoice) the Commission finds that the Test Claim was timely filed.<sup>77</sup>

Government Code section 17557(e) requires that a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Based on the May 12, 2023 filing date, reimbursement eligibility was established for the 2021-2022 fiscal year. However, due to the January 1, 2022 effective date of the test claim statute, the potential period of reimbursement begins on January 1, 2022.

**B. The Test Claim Statute Imposes a State-Mandated New Program or Higher Level of Service on School Districts, Including County Offices of Education, for Schools that Maintain Any Combination of Grades 6 to 12, Inclusive.**

**1. The test claim statute imposes new state-mandated requirements on school districts.**

The test claim statute requires, on or before the start of the 2022–2023 school year, “a public school, including a school operated by a school district, county office of education, or charter school” maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school’s restrooms at all times with an adequate supply of menstrual products (defined as tampons and menstrual pads) available and accessible, free of cost, in all women’s restrooms, any all-gender restrooms,<sup>78</sup> and at least one men’s restroom, and prohibits schools from charging for any menstrual products provided to pupils.<sup>79</sup> The test claim statute also requires these schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.<sup>80</sup>

The test claim statute expressly imposes requirements on “a public school, including a school operated by a school district, county office of education, or charter school” maintaining any combination of classes from grades 6 to 12. Under Government Code section 17514, “school districts” are eligible to seek reimbursement for state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 17519 defines “school district,” as “any school district. . . , or county superintendent of schools.” The county

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<sup>77</sup> Exhibit A, Test Claim, filed May 12, 2023, page 1.

<sup>78</sup> Senate Bill 760 (Stats 2023, ch. 227), approved by the Governor on September 23, 2023, requires that every K-12 schoolsite have at least one all-gender restroom by July 1, 2026.

<sup>79</sup> Education Code section 35292.6(a)-(b), as amended by Statutes 2021, chapter 664.

<sup>80</sup> Education Code section 35292.6, as amended by Statutes 2021, chapter 664.

superintendent of schools is the executive officer of the county office of education.<sup>81</sup> Thus, as described below, K-12 school districts and county offices of education are eligible to seek reimbursement for the requirements imposed by the test claim statute on behalf of their schools that maintain any of grades 6 through 12, inclusive. These districts are hereafter referred to as “school districts.”

The purpose of article XIII B, section 6 is to prevent the state from forcing extra programs on local government each year in a manner that negates their careful budgeting of increased expenditures counted against the local government’s annual spending limit and thus, article XIII B, section 6 requires a showing that the test claim statute mandates *new* activities compared to the prior year on school districts.<sup>82</sup>

Prior to the test claim statute (under former Ed. Code, §35292.6, Stats. 2017, ch. 687), public schools that maintained any of grades 6 through 12, inclusive, and that met a 40-percent pupil poverty threshold (i.e., schools required to operate a schoolwide program pursuant to 20 U.S.C. § 6314(a)(1)(A)) were required to stock at least 50 percent of their restrooms with an adequate supply of feminine hygiene products (defined as sanitary napkins and tampons) free of charge. In the Commission’s Test Claim Decision, *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted May 24, 2019, the Commission clarified which schools under the 40-percent pupil poverty threshold definition were required to comply with this prior law:

The Commission finds that the phrase in the test claim statute requiring that a school meet the “40 percent *pupil* poverty threshold required to operate a schoolwide program” means only those schools that are eligible for Title I, Part A funds and meet the second test identified in section 6314(a)(1)(A) of Title 20 of the United States Code, in which not less than 40 percent of the children *enrolled* in the school are from low-income families.<sup>83</sup>

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<sup>81</sup> Education Code section 1010. County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.)

<sup>82</sup> California Constitution, articles XIII B, sections 1, 8(a) and (b); *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763.

<sup>83</sup> Exhibit G (3), Commission on State Mandates, Test Claim Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted May 24, 2019, [https://csm.ca.gov/decisions/18-tc-01\\_decision.pdf](https://csm.ca.gov/decisions/18-tc-01_decision.pdf) (accessed on September 12, 2023), page 15. Emphasis in original.

The phrase “feminine hygiene products” used in former section 35292.6 was defined as “sanitary napkins and tampons.”<sup>84</sup> The dictionary defines ‘sanitary napkin’ as “a pad of absorbent material, as cotton, worn by women during menstruation to absorb the uterine flow.”<sup>85</sup> This is the same as ‘menstrual products,’ which is defined in the test claim statute as “menstrual pads and tampons for use in connection with the menstrual cycle”<sup>86</sup> Thus, the menstrual products required to be stocked are the same as under prior law.

However, the test claim statute now requires *all public* schools that maintain any combination of grades 6 to 12, inclusive (not only those that met the 40-percent pupil poverty threshold under prior law) to stock menstrual pads and tampons in all women’s restrooms and all-gender restrooms, and at least one men’s restroom. For schools that met the 40-percent pupil poverty threshold under prior law, this increases the number of restrooms required to be stocked and requires a service to a new group of pupils. The Legislature enacted the test claim statute to expand access to menstrual products to “transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products” and to “ensure California provides equal access to education. . . irrespective of gender.”<sup>87</sup> Thus, for these 40-percent pupil poverty schools, the number of restrooms now required to be stocked to serve this additional pupil population is increased to the sum of all women’s restrooms and all-gender restrooms and at least one men’s restroom, minus 50 percent of all school restrooms required to be stocked under prior law.

The requirement to stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and at least one men’s restroom is new for all other schools that maintained any combination of classes from grades 6 through 12, inclusive, and did not meet the 40-percent pupil poverty threshold under prior law.

In addition, the requirement to post a notice in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost, is new for all schools that maintain any of grades 6 through 12, inclusive. The notice shall include the text of the statutory section and contact information, including an

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<sup>84</sup> Former Education Code section 35292.6 (Stats. 2017, ch. 687).

<sup>85</sup> Exhibit G (4), Dictionary.com, “sanitary napkin.” <https://www.dictionary.com/browse/sanitary-napkin> (accessed on September 12, 2023).

<sup>86</sup> Education Code section 35292.6(d), as added by Statutes 2021, chapter 664.

<sup>87</sup> Statutes 2021, chapter 664, section 1. It is this expanded population of transgender or gender nonconforming pupils that the test claim statute is intended to serve that makes the required service new. This factor distinguishes this test claim statute from the statute at issue in *Extended Conditional Voter Registration*, 20-TC-02, in which the Commission found that the test claim statute simply increased costs but did not impose a new program a higher level of service because it merely expanded the same service to additional locations for the same population of people.

email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.<sup>88</sup>

These new requirements are mandated by the state on school districts. The California Supreme Court stated that claimants must be legally or practically compelled to perform an activity, and explained:

Legal compulsion occurs when a statute or executive action uses mandatory language that “require[s]’ or ‘command[s]” a local entity to participate in a program or service. [citations omitted] [construing the term “mandates” in art. XIII B, § 6 to mean “orders’ or ‘commands’”].) Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey.<sup>89</sup>

According to Education Code section 75, “‘Shall’ is mandatory and ‘may’ is permissive.” The plain language of the test claim statute states that the schools “*shall* stock . . . an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom” and “*shall* post a notice . . .”<sup>90</sup> Therefore, the new requirements imposed by the test claim statute are mandated by the state.

In sum, the Commission finds that the test claim statute imposes new state-mandated requirements on school districts for their schools that maintain any combination of classes from grades 6 through 12, inclusive, to do the following:

- For schools that met the 40-percent pupil poverty level that were required to comply with prior law (Ed. Code, § 35292.6, Stats. 2017, ch. 687), to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in additional restrooms, defined as the sum of all women’s restrooms and all-gender restrooms, and at least one men’s restroom, *minus* 50 percent of all restrooms (which is not new because it was required by prior law).
- For schools that did **not** meet the 40-percent pupil poverty level under prior law, to stock all women’s restrooms and any all-gender restrooms, and at least one men’s restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.
- For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice

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<sup>88</sup> Education Code section 35292.6(c), as added by Statutes 2021, chapter 664.

<sup>89</sup> *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815. See also *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>90</sup> Emphasis added.

shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.

The claimant also originally sought reimbursement for:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products.
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the district's restrooms.
- (iii) Purchasing and installing dispensers in the schools and campus restrooms.<sup>91</sup>

However, in its comments on the Draft Proposed Decision, the claimant withdrew its reimbursement request for (i) policies and procedures and (ii) training.<sup>92</sup> As for (iii) purchasing and installing dispensers, dispensers are not mandated by the plain language of the test claim statute but they may be proposed for inclusion in the Parameters and Guidelines if they are supported by evidence in the record showing they are "reasonably necessary for the performance of the state-mandated program" in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

**2. The new activities mandated by the test claim statute impose a new program or higher level of service.**

Article XIII B, section 6 requires reimbursement whenever the Legislature or any state agency mandates a new program or higher level of service that results in costs mandated by the state. "New program or higher level of service" is defined as "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state."<sup>93</sup> Only one of these alternatives is required to establish a new program or higher level of service.<sup>94</sup>

As explained above, the mandated activities are new. In addition, the test claim statute is both unique to government and intended to provide a service to the public. The requirements to stock restrooms with menstrual products and post notices apply to

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<sup>91</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 12, 18, 20.

<sup>92</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision, filed January 26, 2024, page 1.

<sup>93</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

<sup>94</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

school districts maintaining schools with any combination of grades from 6 to 12,<sup>95</sup> so the requirements are imposed uniquely on government.

The test claim statute also provides a service to the public. The statute's legislative findings and declarations extol various services to the public, stating: "access to menstrual products is a basic human right vital for ensuring health, dignity and full participation of all Californians in public life."<sup>96</sup> The Legislature also identifies gender equity for women, girls, transgender, or gender nonconforming people who may also menstruate; decreasing emotional distress, physical infection, and disease; basic educational equity; preventing or reducing absenteeism and significant performance gaps, as well as "social disengagement, feelings of alienation, and adverse outcomes."<sup>97</sup>

Thus, the Commission finds that the newly-mandated activities constitute a new program or higher level of service.

**C. The Test Claim Statute Imposes Costs Mandated by the State within the Meaning of Government Code Sections 17514 and 17556.**

The last issue is whether these new activities result in increased costs mandated by the state. Government Code section 17514 defines "costs mandated by the state" as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim nor any payment shall be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The claimant alleges increased costs to comply with the test claim statute, backed by a declaration signed under penalty of perjury by the District's Deputy Superintendent for Business Services<sup>98</sup> and copies of receipts.<sup>99</sup> Specifically, the District's Deputy Superintendent for Business Services declares increased costs of \$43,625.73 for the 2022-2023 school year, which includes \$37,442.05 for dispensers and \$3,299.92 for installation, and \$2,883.76 for menstrual products.<sup>100</sup> The claimant further alleges costs of \$2,883.76 for the 2023-2024 school year and estimates \$5 million in statewide

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<sup>95</sup> Education Code section 35292.6(a), as added by Statutes 2021, chapter 664.

<sup>96</sup> Statutes 2021, chapter 664, section 1(b).

<sup>97</sup> Statutes 2021, chapter 664, section 1.

<sup>98</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 17-20 (Declaration of Dr. George Landon, Deputy Superintendent of Business Services).

<sup>99</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 21-30 (receipts).

<sup>100</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

costs.<sup>101</sup> Thus, the claimant has put evidence in the record that it has incurred costs mandated by the state in excess of \$1,000.<sup>102</sup>

Additionally, no law or facts in the record support a finding that the exceptions specified in Government Code section 17556 apply to this claim. There is nothing in the record to indicate that additional funds have been made available for the new state-mandated activities.<sup>103</sup> Nor do school districts have fee authority to pay the costs of the alleged mandate,<sup>104</sup> since the statute expressly prohibits charging pupils for the menstrual products.<sup>105</sup>

Therefore, the Commission finds that the test claim statute imposes increased costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

## V. Conclusion

Based on the foregoing analysis, the Commission finds that the test claim statute (Ed. Code, § 35292.6, Stats. 2021, ch. 664), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning January 1, 2022, on school districts, including county offices of education, for their schools that maintain any combination of classes from grades 6 through 12, inclusive, to do the following:

- For schools that met the 40-percent pupil poverty level that were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687), to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in additional restrooms, defined as the sum of all women's restrooms and all-gender restrooms, and at least one men's restroom, *minus* 50 percent of all restrooms (which is not new because it was required by prior law).
- For schools that did **not** meet the 40-percent pupil poverty level under prior law, to stock all women's restrooms and any all-gender restrooms, and at least one men's restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.
- For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information,

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<sup>101</sup> Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

<sup>102</sup> Government Code section 17564.

<sup>103</sup> Government Code section 17556(e).

<sup>104</sup> Government Code section 17556(d).

<sup>105</sup> Education Code section 35292.6(b), as added by Statutes 2021, chapter 664.

including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 26, 2024, I served the:

- **Current Mailing List dated March 15, 2024**
- **Decision adopted March 22, 2024**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664, Sections 1, 3 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 26, 2024 at Sacramento, California.



---

Jill L. Magee  
Commission on State Mandates  
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Sacramento, CA 95814  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/15/24

**Claim Number:** 22-TC-04

**Matter:** Public School Restrooms: Menstrual Products

**Claimant:** Hesperia Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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## Exhibit B

March 26, 2024

Mr. Arthur Palkowitz  
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Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and  
Services Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

On March 22, 2024, the Commission on State Mandates (Commission) adopted the Decision partially approving the Test Claim on the above-entitled matter.

State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the reimbursement claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

### **Draft Expedited Parameters and Guidelines**

Pursuant to California Code of Regulations, title 2, section 1183.9, Commission staff has expedited the parameters and guidelines process by preparing Draft Expedited Parameters and Guidelines to assist the claimant. The proposed reimbursable activities have been limited to those approved in the Decision by the Commission. Reasonably necessary activities to perform the mandated activities may be proposed by the parties. (Cal. Code Regs., tit. 2, §1183.7(d).) "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program (Cal. Code Regs., tit. 2, §1183.7(d).) Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of the Commission's regulations.

### Review of Draft Expedited Parameters and Guidelines

Proposed modifications and comments may be filed on the Draft Expedited Parameters and Guidelines no later than **5:00 pm on April 16, 2024**. (Cal. Code Regs., tit. 2, §1183.9(b).) Please note that all representations of fact submitted to the Commission

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must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, §1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

#### Rebuttals

Written rebuttals may be filed within 15 days of service of comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

#### **Draft Proposed Decision and Parameters and Guidelines**

If there are no substantive comments filed by the comment deadline, then no Draft Proposed Decision will be prepared or issued for comment and the matter will be set for the next regularly scheduled hearing, pursuant to section 1183.9(d) of the Commission's regulations. If substantive comments are filed, Commission staff will review the Draft Expedited Parameters and Guidelines, comments, and any rebuttals and will prepare a Draft Proposed Decision and Parameters and Guidelines, which will be issued for comment.

#### **Alternative Process: Joint Reasonable Reimbursement Methodology and Statewide Estimate of Costs**

##### Test Claimant and Department of Finance Submission of Letter of Intent

Within 30 days of the Commission's adoption of a decision on a test claim, the test claimant and the Department of Finance may notify the executive director of the Commission in writing of their intent to follow the process described in Government Code sections 17557.1–17557.2 and section 1183.11 of the Commission's regulations to develop a *joint reasonable reimbursement methodology* and *statewide estimate of costs* for the initial claiming period and budget year for reimbursement of costs mandated by the state. The written notification shall provide all information and filing dates as specified in Government Code section 17557.1(a).

##### Test Claimant and Department of Finance Submission of Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs

Pursuant to the plan, the test claimant and the Department of Finance shall submit the *Draft Reasonable Reimbursement Methodology and Statewide Estimate of Costs* to the Commission. See Government Code section 17557.1 for guidance in preparing and filing a timely submission.

##### Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs

Upon receipt of the jointly developed proposals, Commission staff shall notify all

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<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

recipients that they shall have the opportunity to review and provide written comments concerning the draft reasonable reimbursement methodology and proposed statewide estimate of costs within 15 days of service. The test claimant and Department of Finance may submit written rebuttals to Commission staff.

Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs  
At least 10 days prior to the next hearing, Commission staff shall review comments and rebuttals and issue a staff recommendation on whether the Commission should approve the draft reasonable reimbursement methodology and adopt the proposed statewide estimate of costs pursuant to Government Code section 17557.2.

### **Alternative Process: Reasonable Reimbursement Methodology Proposed for Inclusion in Parameters and Guidelines**

Government Code section 17518.5 provides a process for a reasonable reimbursement methodology to be proposed by the Department of Finance, the State Controller, an affected state agency, the claimant, or an interested party for inclusion in the parameters and guidelines of an amendment to parameters and guidelines. In this context, Government Code section 17518.5 defines “reasonable reimbursement methodology” as a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514 which shall:

- Be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- Consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner, and
- Whenever possible, be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission’s Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission’s website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon prior approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

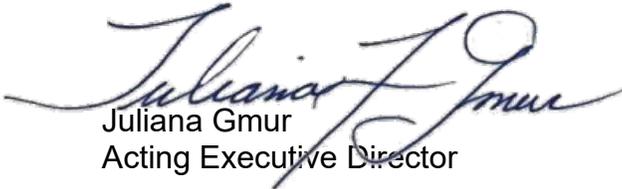
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission’s regulations.

Mr. Palkowitz and Ms. Sidarous  
March 26, 2024  
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### Hearing

The Proposed Decision and Parameters and Guidelines for this matter are tentatively set for hearing on **Friday, May 24, 2024**, at 10:00 a.m., and will be issued on or about May 10, 2024, but may be heard on **Friday, July 26, 2024**, at 10:00 a.m., and will be issued on or about July 12, 2024, if substantive comments are filed by the comment deadline.

Sincerely,



Juliana Gmur  
Acting Executive Director

## DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Education Code Section 35292.6

Statutes 2021, Chapter 664 (AB 367)

### *Public School Restrooms: Menstrual Products*

22-TC-04

Period of reimbursement begins January 1, 2022

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#### I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address the Menstrual Equity for All Act of 2021 (Stats. 2021, ch. 664, Ed. Code, §35292.6), effective January 1, 2022, that requires a public school, including a school operated by a school district, a county office of education, or a charter school, that maintain any combination of classes from grades 6 through 12, inclusive, to stock all women's restrooms, all-gender restrooms, and at least one men's restroom with menstrual products (defined as tampons and menstrual pads), free of cost, on or before the start of the 2022-2023 school year. The Act also requires these public schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock the menstrual products.

On March 22, 2024, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim statute (Ed. Code, § 35292.6, Stats. 2021, ch. 664), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning January 1, 2022, on school districts, including county offices of education, for their schools that maintain any combination of classes from grades 6 through 12, inclusive, to do the following:

- For schools that met the 40-percent pupil poverty level that were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687), to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in additional restrooms, defined as the sum of all women's restrooms and all-gender restrooms, and at least one men's restroom, *minus* 50 percent of all restrooms (which is not new because it was required by prior law).
- For schools that did **not** meet the 40-percent pupil poverty level under prior law, to stock all women's restrooms and any all-gender restrooms, and at least one men's restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.

- For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.

## **II. ELIGIBLE CLAIMANTS**

Any “school district” as defined in Government Code section 17519, except for community colleges, that maintains any combination of classes from grades 6 to 12, inclusive, and that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on May 12, 2023, establishing eligibility for reimbursement for the 2021-2022 fiscal year. However, the test claim statute was effective on January 1, 2022. Therefore, based on the later effective date of the statute, costs incurred are reimbursable on or after January 1, 2022.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

## **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the

mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

- For schools that met the 40-percent pupil poverty level that were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687),<sup>1</sup> to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in *additional* restrooms, defined as the sum of all women's restrooms and all-gender restrooms, and at least one men's restroom, **minus** 50 percent of all restrooms (which is not new because it was required by prior law).

Eligible claimants are **not** entitled to reimbursement under these Parameters and Guidelines for the activities and costs approved by the Commission in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, which addressed Education Code section 35292.6 (Stats. 2017, ch. 687). Those costs can be claimed under *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

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<sup>1</sup> These schools are those that are eligible for Title I, Part A funds and meet the second test identified in section 6314(a)(1)(A) of Title 20 of the United States Code, in which not less than 40 percent of the children *enrolled* in the school are from low-income families. (Commission on State Mandates, Test Claim Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted May 24, 2019, [https://csm.ca.gov/decisions/18-tc-01\\_decision.pdf](https://csm.ca.gov/decisions/18-tc-01_decision.pdf) (accessed on September 12, 2023), page 15).

- For schools that did **not** meet the 40-percent pupil poverty level under prior law, to stock all women’s restrooms and any all-gender restrooms, and at least one men’s restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.
- For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.

***Reimbursement is not required to stock any products other than menstrual pads and tampons for pupils.***

In the reimbursement claims, claimants shall identify:

1. The total number of schools in the claimant’s jurisdiction that maintain any combination of classes from grades 6 through 12, inclusive.
2. The total number of Title 1 schools in the claimant’s jurisdiction identified in #1 above, that met the 40 percent pupil poverty level and were required to comply with former Education Code section 35292.6 (Stats. 2017, ch. 687).
3. For *each* Title 1 school that met the 40-percent pupil poverty level, as defined, and were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687), please identify:
  - the total number of all restrooms in the school,
  - the total number of women’s restrooms in the school, and
  - the total number of all-gender restrooms in the school.
4. For *each* school that did **not** meet the 40-percent pupil poverty level under prior law, please identify:
  - the total number of women’s restrooms in the school, and
  - the total number of all-gender restrooms in the school.

**V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter<sup>2</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds, shall be identified and deducted from any claim submitted for reimbursement.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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<sup>2</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

**X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 26, 2024, I served the:

- **Current Mailing List dated March 15, 2024**
- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date issued March 26, 2024**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 26, 2024 at Sacramento, California.



---

Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/15/24

**Claim Number:** 22-TC-04

**Matter:** Public School Restrooms: Menstrual Products

**Claimant:** Hesperia Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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## Exhibit C

April 16, 2024

Juliana Gmur  
Acting Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814



Re: Test Claim: Public School Restrooms:  
Menstrual Products, (22-TC-04)  
Draft Expedited Parameters and Guidelines (“P & G”).

Dear Ms. Gmur:

Please be advised claimant submits the following comments regarding the Draft Expedited Parameters and Guidelines. (“P & G”) The proposed changes to the P & G are supported by evidence in the record showing that the cost of purchasing and installing dispensers are “reasonably necessary for the performance of the state-mandated program” in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

A. Claimant incurred costs for the purchasing and installing of dispensers as the most efficient and cost-effective method for delivering the menstrual products.

During the test claim process “the claimant submitted a declaration signed under penalty of perjury by the District’s Deputy Superintendent of Business Services, identifying costs of \$43,625.73 for the 2022-2023 school year to comply with the test claim statute. This includes \$37,442.05 for dispensers and \$3,299.92 for installation, and \$2,883.76 for menstrual products. The claimant stated the test claim statute requires it to install dispensers in 100 additional restrooms, for which it incurred increased costs. (Public School Restrooms: Menstrual Products, 22-TC-04 Decision, pages 11-12)

In addition, claimant submitted a declaration signed under penalty of perjury by the District’s Deputy Superintendent of Business Services stating the following: “The selection of dispensers was determined by the Claimant’s Director of Risk Management and third-party vendor as the most efficient and cost-effective method for delivering the menstrual products.” (Claimant’s Rebuttal Comments, filed August 17, 2023.)

B. Claimant requests the Parameters and Guidelines include the cost of purchasing and installing dispensers in the restrooms.

Based on the aforementioned evidence in the record, Claimant requests

section IV. B. of the Parameters and Guidelines provide as follows:

B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for schools that met the 40-percent pupil poverty level that were required to comply with prior law (Ed. Code, § 35292.6, Stats. 2017, ch. 687) and in additional restrooms, defined as the sum of all women’s restrooms and all-gender restrooms, and at least one men’s restroom, minus 50 percent of all restrooms (which is not new because it was required by prior law) to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, for feminine hygiene products (defined only as tampons and sanitary napkins)

Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for schools that did not meet the 40-percent pupil poverty level under prior law, to stock all women’s restrooms and any all-gender restrooms, and at least one men’s restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.

The sufficient number of dispensers necessary to stock the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate (as stated in Section IV. C. of these Parameters and Guidelines), whichever is more cost effective.

#### C. Conclusion

The cost of purchasing and installing dispensers must be included in the Parameters and Guidelines as it is supported by evidence in the record showing they are “reasonably necessary for the performance of the state-mandated program” in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

#### D. Certification

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.

Thank you for your cooperation.

Arthur Palkowitz  
Arthur M. Palkowitz, Esq.  
Claimant Representative

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 16, 2024, I served the:

- **Claimant’s Comments on the Draft Expedited Parameters and Guidelines filed April 16, 2024**
- **Finance’s Comments on the Draft Expedited Parameters and Guidelines filed April 16, 2024**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

by making it available on the Commission’s website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 16, 2024 at Sacramento, California.



David Chavez  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

## COMMISSION ON STATE MANDATES

### Mailing List

**Last Updated:** 4/12/24

**Claim  
Number:** 22-TC-04

**Matter:** Public School Restrooms: Menstrual Products

**Claimant:** Hesperia Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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April 16, 2024

**Exhibit D**

**RECEIVED**  
April 16, 2024  
**Commission on  
State Mandates**

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**Comments to Draft Expedited Parameters and Guidelines: Public School Restrooms:  
Menstrual Products, 22-TC-04**

Dear Heather Halsey:

The Department of Finance has reviewed the Draft Expedited Parameters and Guidelines (Ps & Gs) prepared by the Commission on State Mandates (Commission) on March 26, 2024, and respectfully submits the following comments and concerns in response to the expedited draft parameters and guidelines.

Finance notes the following additional concerns:

As stated in Chapter 664, Statutes of 2021 (AB 367) and emphasized in the Commission's decision, the intent of the test claim statute is to expand student access to menstrual products. The reimbursable activities and restrooms for which a Claimant seeks reimbursement should specify **pupil** restrooms, not all restrooms, in line with the intent of the test claim statute.

The test claim statute also requires at least one men's restroom to be stocked with menstrual products at the mandated school sites. While the draft Ps & Gs do not require Claimants to identify the total number of men's restrooms in their reimbursement claims, Finance suggests Claimants should be required to specify the total number of men's restrooms in the school regardless of their compliance with the previous test claim, to ensure compliance with the test claim statute. The Ps & Gs should clearly state that reimbursement is not required to stock menstrual products in more than one men's restroom, in staff restrooms, or in school restrooms not required by statute.

If you have any questions or need additional information regarding this matter, please contact Melissa Ng, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,

*Chris Ferguson*

Chris Ferguson  
Program Budget Manager

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 16, 2024, I served the:

- **Claimant’s Comments on the Draft Expedited Parameters and Guidelines filed April 16, 2024**
- **Finance’s Comments on the Draft Expedited Parameters and Guidelines filed April 16, 2024**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

by making it available on the Commission’s website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 16, 2024 at Sacramento, California.



David Chavez  
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## COMMISSION ON STATE MANDATES

### Mailing List

**Last Updated:** 4/12/24

**Claim  
Number:** 22-TC-04

**Matter:** Public School Restrooms: Menstrual Products

**Claimant:** Hesperia Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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**RECEIVED**  
April 16, 2024  
**Commission on  
State Mandates**

MALIA M. COHEN  
CALIFORNIA STATE CONTROLLER

## Exhibit E

April 16, 2024

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**SUBJECT: Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Tentative Hearing Date**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School Districts, Claimant

Dear Heather Halsey:

The State Controller's Office reviewed the Draft Expedited Parameters and Guidelines for Public School Restrooms: Menstrual Products, and recommend no changes.

If you have any questions, please contact Linda Wong, Local Reimbursements Section, Local Government Programs and Services Division, by email at [lwaty@sco.ca.gov](mailto:lwaty@sco.ca.gov), or by telephone at (916) 229-8037.

Sincerely,

*Darryl Mar*

Darryl Mar  
Manager, Local Reimbursements Section

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On April 16, 2024, I served the:

- **Current Mailing List dated April 12, 2024**
- **Controller's Comments on the Draft Expedited Parameters and Guidelines filed April 16, 2024**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 16, 2024 at Sacramento, California.



David Chavez  
Commission on State Mandates  
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(916) 323-3562

## COMMISSION ON STATE MANDATES

### Mailing List

**Last Updated:** 4/12/24

**Claim  
Number:** 22-TC-04

**Matter:** Public School Restrooms: Menstrual Products

**Claimant:** Hesperia Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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May 10, 2024

## Exhibit F

Mr. Arthur Palkowitz  
Law Offices of Arthur Palkowitz  
12807 Calle de la Siena  
San Diego, CA 92130

Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and  
Services Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing**  
*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

The Draft Proposed Decision and Proposed Parameters and Guidelines for the above-captioned matter is enclosed for your review and comment.

### Written Comments

Written comments may be filed on the Draft Proposed Decision and Proposed Parameters and Guidelines no later than **5:00 pm on May 31, 2024**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

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<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Palkowitz and Ms. Sidarous  
May 10, 2024  
Page 2

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

### Hearing

This matter is set for hearing on **Friday, July 26, 2024** at 10:00 a.m. The Proposed Decision will be issued on or about July 12, 2024.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey  
Executive Director

**ITEM \_\_\_\_**

**DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES**

Education Code Section 35292.6

Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367)

*Public School Restrooms: Menstrual Products*

22-TC-04

Period of Reimbursement begins January 1, 2022

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**EXECUTIVE SUMMARY**

**I. Summary of the Mandate**

These Parameters and Guidelines address the Menstrual Equity for All Act of 2021 (Stats. 2021, ch. 664, Ed. Code, §35292.6), effective January 1, 2022. The Act requires public schools, including a school operated by a school district, a county office of education, or a charter school, that maintain any combination of classes from grades 6 through 12, inclusive, to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom with menstrual products (defined as tampons and menstrual pads), free of cost, on or before the start of the 2022-2023 school year. The Act also requires these public schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to be stocked with menstrual products.<sup>1</sup>

On March 22, 2024, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim statute (Ed. Code, § 35292.6, Stats. 2021, ch. 664), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning January 1, 2022, on school districts, including county offices of education, for their schools that maintain any combination of classes from grades 6 through 12, inclusive, to do the following:

1. For schools that met the 40-percent pupil poverty level that were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687), to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in additional restrooms, defined as the sum of all women’s restrooms and all-gender

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<sup>1</sup> The Act was amended by Statutes 2023, chapter 421 to expand the requirements to pupils in grades 3 through 12, inclusive. This Decision makes no findings on the amended Act.

restrooms, and at least one men’s restroom, *minus* 50 percent of all restrooms (which is not new because it was required by prior law).

2. For schools that did **not** meet the 40-percent pupil poverty level under prior law, to stock all women’s restrooms and any all-gender restrooms, and at least one men’s restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.
3. For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.<sup>2</sup>

## **II. Procedural History**

The Commission adopted the Test Claim Decision on March 22, 2024.<sup>3</sup> Commission staff issued the Draft Expedited Parameters and Guidelines on March 26, 2024.<sup>4</sup> The claimant,<sup>5</sup> the Department of Finance (Finance),<sup>6</sup> and the State Controller’s Office (Controller)<sup>7</sup> all filed comments on the Draft Expedited Parameters and Guidelines on April 16, 2024. Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on May 10, 2024, for the July 26, 2024 hearing.<sup>8</sup>

## **III. Positions of the Parties**

### **A. Hesperia Unified School District**

In comments on the Draft Expedited Parameters and Guidelines, the claimant states that it incurred costs to purchase and install dispensers as the most efficient and cost-effective way to comply with the mandate. The claimant relies on declarations signed under penalty of perjury by the District’s Deputy Superintendent of Business Services

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<sup>2</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 3-4.

<sup>3</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024.

<sup>4</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024.

<sup>5</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>6</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>7</sup> Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>8</sup> Exhibit F, Draft Proposed Decision and Parameters and Guidelines issued May 10, 2024.

submitted with its Test Claim and rebuttal comments.<sup>9</sup> Based on this evidence, the claimant requests adding to the Parameters and Guidelines reimbursement to purchase and install “a sufficient number of suitable dispensers” for schools that met the 40-percent pupil poverty level that were required to comply with prior law, as well as “a sufficient number of suitable dispensers for schools that did not meet the 40-percent pupil poverty level under prior law.”<sup>10</sup> The claimant also proposes that the Parameters and Guidelines state a “sufficient number of dispensers necessary to stock the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.”<sup>11</sup> Finally, the claimant requests the Parameters and Guidelines to include that purchasing and installing new dispensers“ is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate . . . , whichever is more cost effective.”<sup>12</sup>

### **B. Department of Finance**

Finance comments that the test claim statute’s intent is to expand student access to menstrual products, so the reimbursable activities should specify *pupil* restrooms rather than all restrooms.<sup>13</sup> Further, Finance suggests that, because the test claim statute requires stocking at least one men’s restroom with menstrual products, the claimants should be required to specify the total number of men’s restrooms in the school regardless of compliance with the previous test claim to ensure compliance with the test claim statute. Finance also states that the Parameters and Guidelines “should clearly state that reimbursement is not required to stock menstrual products in more than one men’s restroom, in staff restrooms, or in school restrooms not required by statute.”<sup>14</sup>

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<sup>9</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>10</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>11</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>12</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>13</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>14</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

### **C. State Controller's Office**

The Controller “recommend no changes” to the Draft Expedited Parameters and Guidelines.<sup>15</sup>

#### **IV. Discussion**

##### **A. Eligible Claimants (Section II. of the Parameters and Guidelines)**

Consistent with the Test Claim Decision,<sup>16</sup> the Parameters and Guidelines define the eligible claimants as:

Any “school district” as defined in Government Code section 17519, except for community colleges, that maintains any combination of classes from grades 6 to 12, inclusive, and that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

##### **B. Period of Reimbursement (Section III. of the Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. As stated in the Test Claim Decision, the claimant filed the Test Claim on May 12, 2023, establishing eligibility for reimbursement for the 2021-2022 fiscal year.<sup>17</sup> The test claim statute became effective on January 1, 2022, and has a delayed operative date of July 1, 2022.<sup>18</sup> As noted in the Test Claim Decision, the test claim statute requires the restrooms to be stocked “[o]n or before the start of the 2022–23 school year.”<sup>19</sup> Based on the effective date of the statute, however, Section III. of the Parameters and Guidelines states that allowable costs incurred are reimbursable on or after January 1, 2022.

##### **C. Reimbursable Activities (Section IV. of the Parameters and Guidelines).**

###### **1. There is substantial evidence in the record that purchasing and installing, or repairing or retrofitting, dispensers to provide menstrual products is reasonably necessary to comply with the mandate.**

In comments on the Draft Expedited Parameters and Guidelines, the claimant requests adding to Section IV. of the Parameters and Guidelines to purchase and install, or retrofit and repair, dispensers for the menstrual products as reasonably necessary to comply with the mandate.

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<sup>15</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024.

<sup>16</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 4, 19-20.

<sup>17</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 19.

<sup>18</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 18-19.

<sup>19</sup> Education Code section 35292.6(a) (Stats. 2021, ch. 664). Exhibit A, Test Claim Decision, adopted March 22, 2024, page 18.

The Commission’s regulations require the Parameters and Guidelines to identify the activities mandated by the state and “may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.”<sup>20</sup> “Reasonably necessary activities” are defined in pertinent part as those “necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes . . . that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible.”<sup>21</sup> Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why they are necessary to perform the state-mandated activity.<sup>22</sup>

In comments on the Draft Expedited Parameters and Guidelines, the claimant states that it incurred costs to purchase and install dispensers as the most efficient and cost-effective way to comply with the mandate. The claimant relies on declarations signed under penalty of perjury by the District’s Deputy Superintendent of Business Services submitted with its Test Claim that identified various costs to comply with the test claim statute, including for dispensers and installation.<sup>23</sup> There is no evidence rebutting either the claimant’s declarations or the other information in the record, and the claimant’s request is consistent with the Parameters and Guidelines for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, the related claim.<sup>24</sup>

Accordingly, staff finds there is substantial evidence in the record to support the request to add purchasing and installing or retrofitting and repairing dispensers for the menstrual products as a reasonably necessary activity to the extent that a school is not already equipped with, or cannot retrofit or repair, a sufficient number of dispensers in their restrooms to comply with the mandate, consistent with the Decision in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

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<sup>20</sup> Government Code section 17557(a) and section 1183.7.

<sup>21</sup> California Code of Regulations, title 2, section 1183.7(d).

<sup>22</sup> Government Code section 17557; California Code of Regulations, title 2, sections 1183.7(d), 1187.5; Code of Civil Procedure section 1094.5(b), stating that “[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”

<sup>23</sup> These figures were resubmitted in a later-submitted declaration. Exhibit X (3), Claimant’s Rebuttal Comments on the Test Claim, filed August 17, 2023, pages 2, 6 (Landon Declaration).

<sup>24</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019.

<https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed on April 26, 2024), page 26.

**2. Limiting the restrooms required to be stocked with menstrual products to “pupil” restrooms, as requested by Finance, is inconsistent with the test claim statute and is therefore denied.**

Finance proposes limiting reimbursement to stocking menstrual products only in *pupil* restrooms.<sup>25</sup> However, this request is not consistent with the test claim statute, which provides that schools “shall stock the school's restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in *all* women's restrooms and all-gender restrooms, and in at least one men's restroom.”<sup>26</sup> The statute does not limit the restrooms required to be stocked with menstrual products to pupil restrooms. According to the California Department of Education’s (CDE’s) K-12 Toilet Requirement Summary, the California Plumbing Code does not require specific toilets for staff and pupils.<sup>27</sup> And schools may have single occupancy restrooms designated as all-gender. So limiting the restrooms required to be stocked with feminine hygiene products to only “pupil” restrooms is not consistent with the flexibility available for school restroom facilities. Accordingly, this request is denied.

**3. Clarifying language is added to the Parameters and Guidelines to state that reimbursement is not required to stock menstrual products in more than one men’s restroom, as requested by Finance.**

Finance contends that the Parameters and Guidelines “should clearly state that reimbursement is not required to stock menstrual products in more than one men’s restroom or in school restrooms not required by statute.”<sup>28</sup>

The plain language of the test claim statute requires schools to stock an adequate supply of menstrual products “in all women's restrooms and all-gender restrooms, and in *at least one men's restroom*.”<sup>29</sup> Schools are not mandated to stock menstrual products in more than one men’s restroom. Thus, staff agrees with Finance’s proposed amendment to Section IV. of the Parameters and Guidelines to clarify that the stocking only one men’s restroom with menstrual products is required, with additional clarification that only one men’s restroom “per school” must be stocked.

However, Finance’s additional proposed language, that reimbursement is not required to stock menstrual products in “school restrooms not required by statute,” is vague and unnecessary and duplicates the more specific plain language of the test claim statute, as reflected in Section IV.A. of the Parameters and Guidelines that authorizes

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<sup>25</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1. Emphasis in original.

<sup>26</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added.

<sup>27</sup> Exhibit X (1), CDE, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on April 19, 2024).

<sup>28</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>29</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added.

reimbursement to stock “all” women’s restrooms and all-gender restrooms, and one men’s restroom per school.<sup>30</sup> Thus, Finance’s request to include this additional language is denied.

**4. The Parameters and Guidelines require the claimants to identify in their reimbursement claims specified information regarding the number of schools in the claimant’s jurisdiction that maintain any combination of classes from grades 6 to 12, enrollment information, the number of schools that had to comply with the mandate under prior law, and the number of restrooms now required to be stocked with menstrual products.**

The Draft Expedited Parameters and Guidelines included a requirement to identify in reimbursement claims specified information to support actual costs incurred for labor and materials to stock the school’s restrooms at all times with an adequate supply of menstrual products, including the number of schools maintaining grades 6 to 12 in the claimant’s jurisdiction, the number of schools required to comply with prior law, and the number of female and all-gender restrooms in each school required to comply with the mandate. Both Finance and the claimant propose adding information to these reporting requirements.

Finance suggests, without explanation, that the claimants should be required to specify the total number of men’s restrooms in the school regardless of compliance with the previous Test Claim to ensure compliance with the test claim statute.<sup>31</sup> Given the requirement to stock only one men’s restroom per grade 6-12 school with menstrual products, and that the Draft Expedited Parameters and Guidelines require reporting the number of grade 6-12 schools in the claimant’s jurisdiction, it is unclear why reporting this information would be relevant or reasonably necessary. There is no evidence in the record to show that requiring the claimants to identify the total number of men’s restrooms is reasonably necessary because all the information needed to reimburse school districts, at one men’s restroom per school, is the number of schools. Therefore, Finance’s request is denied.

The claimant requests that the number of dispensers eligible for reimbursement should be based, in part, on the school’s total enrollment of *female* pupils in grades 6 to 12 for each claim year. Staff agrees that determining an adequate supply of menstrual products and dispensers depends on the enrollment of pupils in grades 6 to 12 that may use those products, which includes female pupils, the number of products those pupils may use each school year,<sup>32</sup> and the number of restrooms now required to be stocked.

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<sup>30</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added. Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024, page 7.

<sup>31</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>32</sup> The Commission’s Statewide Cost Estimate for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, estimated 138 products per pupil per year. (Exhibit X (5), Commission on State Mandates, Statewide Cost Estimate on *Public School Restrooms*:

This information is consistent with reporting under the Parameters and Guidelines for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.<sup>33</sup>

However, this mandate is not limited to female pupils. Rather, the legislative intent of the Menstrual Equity for All Act is to provide menstrual products “at all times” to all genders, including transgender men, nonbinary, and gender nonconforming students.<sup>34</sup> And, enrollment numbers for this pupil population are not available. The Office of the Legislative Analyst estimated that less than one percent of the population aged 13 years and over identify as transgender, and that transgender and nonbinary persons generally comprise similarly small shares of pupils in the public education system.<sup>35</sup> And the legislative history of the test claim statute estimates increased costs of 10 percent based on additional dispensers in men’s and all-gender restrooms and the increased population of pupils subject to the mandate.<sup>36</sup>

Therefore, to support the actual cost incurred as a result of this mandate, the Parameters and Guidelines require claimants to provide each school’s total enrollment of female pupils, and its estimate of the total enrollment of transgender, nonbinary, and gender nonconforming pupils, who may use menstrual products in grades 6 to 12 in the claim year.

#### **V. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines and authorize staff to make any technical, non-substantive changes to the Proposed Decision and Parameters and Guidelines following the hearing.

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*Feminine Hygiene Products*, 18-TC-01, adopted December 4, 2020, [https://csm.ca.gov/decisions/18-TC-01\\_120920.pdf](https://csm.ca.gov/decisions/18-TC-01_120920.pdf) (accessed on April 26, 2024), pages 14-15.) The Legislature used the Commission’s Statewide Cost Estimate when estimating the costs of the mandate. (Exhibit A, Test Claim Decision, adopted March 22, 2024, page 9 (citing to Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2.)

<sup>33</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019. <https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed on April 26, 2024), page 25.

<sup>34</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 7-8 (citing to Stats. 2021, ch. 664, § 1.).

<sup>35</sup> Exhibit X (6), Legislative Analyst’s Office, Letter to Attorney General Rob Bonta regarding a proposed ballot measure, November 14, 2023, <https://lao.ca.gov/ballot/2023/230519.pdf> (accessed on April 25, 2024), page 2.

<sup>36</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 8 (citing Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2.).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

<p><b>IN RE PARAMETERS AND GUIDELINES</b></p> <p>Education Code Section 35292.6</p> <p>Statutes 2021, Chapter 664, Sections 1 and 3, (AB 367)</p> <p>The period of reimbursement begins January 1, 2022</p>	<p>Case No.: 22-TC-04</p> <p><i>Public School Restrooms: Menstrual Products</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted July 26, 2024)</i></p>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on July 26, 2024. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified/rejected] the Decision and Parameters and Guidelines by a vote of [vote will be included in the adopted Decision and Parameters and Guidelines], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller	
Jennifer Holman, Representative of the Director of the Office of Planning and Research	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	

## I. Summary of the Mandate

These Parameters and Guidelines address the Menstrual Equity for All Act of 2021 (Stats. 2021, ch. 664, Ed. Code, §35292.6), effective January 1, 2022. The Act requires public schools, including a school operated by a school district, a county office of education, or a charter school, that maintain any combination of classes from grades 6 through 12, inclusive, to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom with menstrual products (defined as tampons and menstrual pads), free of cost, on or before the start of the 2022-2023 school year. The Act also requires these public schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to be stocked with menstrual products.<sup>37</sup>

On March 22, 2024, the Commission on State Mandates (Commission) adopted a Decision finding that the test claim statute (Ed. Code, § 35292.6, Stats. 2021, ch. 664), imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning January 1, 2022, on school districts, including county offices of education, for their schools that maintain any combination of classes from grades 6 through 12, inclusive, to do the following:

For schools that met the 40-percent pupil poverty level that were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687), to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in additional restrooms, defined as the sum of all women’s restrooms and all-gender restrooms, and at least one men’s restroom, *minus* 50 percent of all restrooms (which is not new because it was required by prior law).

For schools that did **not** meet the 40-percent pupil poverty level under prior law, to stock all women’s restrooms and any all-gender restrooms, and at least one men’s restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.

For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.<sup>38</sup>

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<sup>37</sup> The Act was amended by Statutes 2023, chapter 421 to expand the requirements to pupils in grades 3 through 12, inclusive. This Decision makes no findings on the amended Act.

<sup>38</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 3-4.

## II. Procedural History

The Commission adopted the Test Claim Decision on March 22, 2024.<sup>39</sup> Commission staff issued the Draft Expedited Parameters and Guidelines on March 26, 2024.<sup>40</sup> The claimant, the Department of Finance (Finance), and the State Controller's Office (Controller), all filed comments on the Draft Expedited Parameters and Guidelines on April 16, 2024.<sup>41</sup> Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on May 10, 2024,<sup>42</sup> for the July 26, 2024 hearing.

## III. Positions of the Parties

### A. Hesperia Unified School District

In comments on the Draft Expedited Parameters and Guidelines, the claimant requests reimbursement to purchase and install dispensers as the most efficient and cost-effective way to comply with the mandate.<sup>43</sup> The claimant relies on declarations submitted with the Test Claim and Test Claim Rebuttal Comments, which were signed under penalty of perjury by the District's Deputy Superintendent of Business Services. The declaration submitted with the Test Claim identified costs of \$43,625.73 for the 2022-2023 school year to comply with the test claim statute, which includes \$37,442.05 for dispensers, \$3,299.92 for installation, and \$2,883.76 for menstrual products.<sup>44</sup> The claimant states the test claim statute requires it to install dispensers in 100 additional restrooms, for which it incurred increased costs.<sup>45</sup> The claimant's declaration, submitted with its rebuttal to Finance's comments on the Test Claim, states its selection of dispensers was determined by its Director of Risk Management and a third-party vendor as the most efficient and cost-effective method to deliver the menstrual

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<sup>39</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024.

<sup>40</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024.

<sup>41</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024; Exhibit D, Finance's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024; and Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024.

<sup>42</sup> Exhibit F, Draft Proposed Decision and Parameters and Guidelines issued May 10, 2024.

<sup>43</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>44</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>45</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

products.<sup>46</sup> Based on this evidence, the claimant requests adding the following reasonably necessary activities to Section IV. of the Parameters and Guidelines:

B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for schools that met the 40-percent pupil poverty level that were required to comply with prior law (Ed. Code, § 35292.6, Stats. 2017, ch. 687) and in additional restrooms, defined as the sum of all women’s restrooms and all-gender restrooms, and at least one men’s restroom, minus 50 percent of all restrooms (which is not new because it was required by prior law) to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, for feminine hygiene products (defined only as tampons and sanitary napkins)

Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for schools that did not meet the 40-percent pupil poverty level under prior law, to stock all women’s restrooms and any all-gender restrooms, and at least one men’s restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.

The sufficient number of dispensers necessary to stock the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate (as stated in Section IV. C. of these Parameters and Guidelines), whichever is more cost effective.<sup>47</sup>

### **B. Department of Finance**

Finance comments that the test claim statute’s intent was to expand student access to menstrual products, so the reimbursable activities for which a claimant seeks reimbursement should be limited to pupil restrooms rather than all restrooms.<sup>48</sup> Further, Finance suggests that, because the test claim statute requires stocking at least one men’s restroom with menstrual products, the claimants should be required to specify the total number of men’s restrooms in the school regardless of compliance with the

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<sup>46</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>47</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>48</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

previous Test Claim, to ensure compliance with the test claim statute.<sup>49</sup> Finance also states that the Parameters and Guidelines “should clearly state that reimbursement is not required to stock menstrual products in more than one men’s restroom, in staff restrooms, or in school restrooms not required by statute.”<sup>50</sup>

### **C. State Controller’s Office**

The Controller submitted comments that “recommend no changes” to the Draft Expedited Parameters and Guidelines.<sup>51</sup>

## **IV. Discussion**

### **A. Eligible Claimants (Section II. of the Parameters and Guidelines)**

The Test Claim Decision found that the test claim statute imposed a reimbursable state-mandated program on school districts, including county offices of education.<sup>52</sup> Government Code section 17519 defines “school district” for purposes of claiming reimbursement under article XIII B, section 6 of the California Constitution as “any school district. . . or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education.<sup>53</sup> Therefore, Section II. of the Parameters and Guidelines defines the eligible claimants as:

Any “school district” as defined in Government Code section 17519, except for community colleges, that maintains any combination of classes from grades 6 to 12, inclusive, and that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

### **B. Period of Reimbursement (Section III. of the Parameters and Guidelines)**

As noted in the Test Claim Decision, the test claim statute became effective on January 1, 2022, and has a delayed operative date of July 1, 2022:

The test claim statute has an effective date of January 1, 2022, and an operative date of July 1, 2022. [Fn. omitted.] The Legislature often postpones the operation of a statute until a later date to allow “persons

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<sup>49</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>50</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>51</sup> Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024.

<sup>52</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 4, 19-20.

<sup>53</sup> Education Code section 1010. As indicated in the test claim decision, county offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.) Exhibit A, Test Claim Decision, adopted March 22, 2024, page 18.

and agencies affected by it to become aware of its existence and to comply with its terms.” [Fn. omitted.] Here, the test claim statute states that the restrooms must be stocked “[o]n or before the start of the 2022–23 school year.” [Fn. omitted.]<sup>54</sup>

The Test Claim Decision found that the period of reimbursement begins on January 1, 2022, the statute’s effective date, as follows:

Government Code section 17557(e) requires that a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Based on the May 12, 2023 [Test Claim] filing date, reimbursement eligibility was established for the 2021- 2022 fiscal year. However, due to the January 1, 2022 effective date of the test claim statute, the potential period of reimbursement begins on January 1, 2022.<sup>55</sup>

Section III. of the Parameters and Guidelines therefore states that allowable costs incurred are reimbursable on or after January 1, 2022.

**C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

**1. There is substantial evidence in the record that purchasing and installing, or repairing or retrofitting, dispensers to provide menstrual products is reasonably necessary to comply with the mandate.**

In comments on the Draft Expedited Parameters and Guidelines, the claimant requests adding a reimbursable activity to Section IV. of the Parameters and Guidelines to purchase and install, or retrofit and repair, dispensers for the menstrual products as reasonably necessary to comply with the mandate. Specifically, the claimant requests adding the following language to Section IV. of the Parameters and Guidelines:

B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for schools that met the 40-percent pupil poverty level that were required to comply with prior law (Ed. Code, § 35292.6, Stats. 2017, ch. 687) and in additional restrooms, defined as the sum of all women’s restrooms and all-gender restrooms, and at least one men’s restroom, minus 50 percent of all restrooms (which is not new because it was required by prior law) to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, for feminine hygiene products (defined only as tampons and sanitary napkins)

Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for schools that did not meet the 40-percent pupil poverty level under prior law, to stock all women’s restrooms and any all-gender restrooms, and at least one men’s restroom, at all times with an adequate

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<sup>54</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 18.

<sup>55</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 19.

supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.

The sufficient number of dispensers necessary to stock the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate (as stated in Section IV.C. of these Parameters and Guidelines), whichever is more cost effective.<sup>56</sup>

The Commission's statutes and regulations require that the Parameters and Guidelines identify the activities mandated by the state and "may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program."<sup>57</sup> "Reasonably necessary activities" are defined in the Commission's regulations as:

"Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>58</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why it is necessary to perform the state-mandated activity.<sup>59</sup>

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<sup>56</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>57</sup> Government Code section 17557(a), California Code of Regulations, title 2, section 1183.7.

<sup>58</sup> California Code of Regulations, title 2, section 1183.7(d).

<sup>59</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5; Code of Civil Procedure section 1094.5(b), stating that "[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

In comments on the Draft Expedited Parameters and Guidelines, the claimant states that it incurred costs to purchase and install dispensers as the most efficient and cost effective way to comply with the mandate.<sup>60</sup> The claimant relies on the following evidence in support of its request:

- A declaration submitted with the Test Claim and signed under penalty of perjury by the District’s Deputy Superintendent of Business Services that identified costs of \$43,625.73 for the 2022-2023 school year to comply with the test claim statute, including \$37,442.05 for dispensers, \$3,299.92 for installation as follows:

Increased cost of purchasing Dispensers during FY 2022-2023

EVOGEN EVI- DISPENSER (59 UNITS) \$22,090.81

EVOGEN EVI- DISPENSER (41 UNITS) \$15,351.24

Increased cost of dispensers. \$37,442.05

(PSR Menstrual 022; 024.)

Increased cost of installing Dispensers- Labor Cost

Director of Risk Management- Hourly Rate \$77.78

Custodial Supervisor- Hourly Rate \$49.14

Time to install for both employees - 20 hours.

August 5, 2022

September 16, 2022

Labor Hour Cost (\$77.78+\$49.14= \$126.92) @20 hours is \$2,538.40 plus 30% for statutory costs \$3,299.92

The selection of dispensers was determined by the Claimant's Director of Risk Management and third-party vendor as the most efficient and cost-effective method for delivering the menstrual products.<sup>61</sup>

- A declaration submitted with the Claimant’s Rebuttal Comments on the Test Claim, which was signed under penalty of perjury by the District’s Deputy Superintendent of Business Services that states “selection of dispensers was

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<sup>60</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>61</sup> This declaration was also submitted in the Test Claim rebuttal comments. Exhibit X (3), Claimant’s Rebuttal Comments on the Test Claim, filed August 17, 2023, pages 2, 6 (Landon Declaration).

determined by its Director of Risk Management and a third-party vendor as the most efficient and cost-effective method for delivering the menstrual products.”<sup>62</sup>

In addition, the claimant’s request is supported by “The Menstrual Equity for All Act; A Handbook for California Public School Districts” that lists benefits and drawbacks of three types of dispensers based on the following “storage” considerations:

- a. Menstrual products must be stored in a clean and dry place.
- b. Not all menstrual products have the same shape and size.
- c. Menstrual products must be accessible to all students, and some students may have different accessibility needs.<sup>63</sup>

And, as stated in the Commission’s Test Claim Decision, the legislative history for the test claim statute expected costs of “\$2 million to LEAs [Local Education Agencies or School Districts] to install or modify menstrual product dispensers.”<sup>64</sup>

There is no evidence rebutting the claimant’s declarations or the information in the record. In addition, the Commission approved reimbursement to purchase and install dispensers in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, the prior related Test Claim, as follows:

Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school’s restrooms.

The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

*Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the*

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<sup>62</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1. Exhibit X (3), Claimant’s Rebuttal Comments on the Test Claim, filed August 17, 2023, pages 2, 6 (Landon Declaration).

<sup>63</sup> Exhibit X (7), “The Menstrual Equity for All Act; A Handbook for California Public School Districts, January 2023”, [https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook\\_Final.pdf](https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook_Final.pdf) (accessed on April 26, 2024), page 16.

<sup>64</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 9 (citing to Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2).

*mandate (as stated in Section IV. C. of these Parameters and Guidelines), whichever is more cost effective.*<sup>65</sup>

Accordingly, the Commission finds there is substantial evidence in the record to support the request to add purchasing and installing or retrofitting and repairing dispensers for the menstrual products as a reasonably necessary activity to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, consistent with the Decision in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

**2. Limiting the restrooms required to be stocked with menstrual products to “pupil” restrooms, as requested by Finance, is inconsistent with the test claim statute and is therefore denied.**

Finance proposes limiting reimbursement to stocking menstrual products only in *pupil* restrooms, stating: “The reimbursable activities and restrooms for which a Claimant seeks reimbursement should specify **pupil** restrooms, not all restrooms, in line with the intent of the test claim statute.”<sup>66</sup>

However, this request is not consistent with the test claim statute. The activity approved by the Commission tracks the statutory language in Education Code section 35292.6(a), which states that a public school required to comply with the mandate “shall stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in *all* women’s restrooms and all-gender restrooms, and in at least one men’s restroom.”<sup>67</sup> The plain language of the test claim statute does not limit the restrooms to pupil restrooms.

In addition, the California Department of Education’s (CDE’s) K-12 Toilet Requirement Summary states that the California Plumbing Code does not require specific toilets for staff and pupils. Although CDE recommends providing separate staff toilets due to safety and liability concerns, some schools may not have separate restrooms for pupils and staff.<sup>68</sup> Furthermore, schools may have single occupancy restrooms designated as all-gender. Thus, limiting the restrooms required to be stocked with feminine hygiene products to only “pupil” restrooms is not consistent with the plain language of the test

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<sup>65</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019, <https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed April 29, 2024), page 26. Emphasis in original.

<sup>66</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1. Emphasis in original.

<sup>67</sup> Emphasis added.

<sup>68</sup> Exhibit X (1), California Department of Education, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on April 19, 2024).

claim statute or the flexibility available for school restroom facilities. Accordingly, this request is denied.

**3. Clarifying language is added to the Parameters and Guidelines to state that reimbursement is not required to stock menstrual products in more than one men’s restroom, as requested by Finance.**

Finance contends that the Parameters and Guidelines “should clearly state that reimbursement is not required to stock menstrual products in more than one men’s restroom or in school restrooms not required by statute.”<sup>69</sup>

The plain language of the test claim statute requires schools to stock an adequate supply of menstrual products “in all women’s restrooms and all-gender restrooms, and in *at least one men’s restroom.*”<sup>70</sup> The “at least” language could result in schools supplying more than one men’s restroom with menstrual products at the State’s expense. However, the test claim statute does not mandate schools to stock menstrual products in more than one men’s restroom. Thus, the Commission agrees with Finance’s proposed amendment to Section IV. of the Draft Expedited Parameters and Guidelines to clarify that the mandate requires stocking only one men’s restroom, with additional clarification that only one men’s restroom “per school” must be stocked:

**Reimbursement is not required to stock any products other than menstrual pads and tampons for pupils, or to stock menstrual products in more than one men’s restroom per school.**

However, the additional language Finance proposes – that reimbursement is not required to stock menstrual products in “school restrooms not required by statute” – is vague and duplicative and unnecessary. The language in Section IV. now limits reimbursement to stocking “all women’s restrooms and all-gender restrooms, and one men’s restroom.” This language is clear, more specific, and more consistent with the plain language of the test claim statute to stock “all” women’s restrooms and all-gender restrooms, and at least one men’s restroom per school.<sup>71</sup> Thus, Finance’s request to include this additional language is denied.

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<sup>69</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>70</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added.

<sup>71</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added. Exhibit B, Draft Expedited Parameters and Guidelines, issued March 26, 2024, page 7.

**4. The Parameters and Guidelines require the claimants to identify in their reimbursement claims specified information regarding the number of schools in the claimant’s jurisdiction that maintain any combination of classes from grades 6 to 12, enrollment information, the number of schools that had to comply with the mandate under prior law, and the number of restrooms now required to be stocked with menstrual products.**

The Draft Expedited Parameters and Guidelines required the claimants to identify in their reimbursement claims the following information to support the actual costs claimed for labor and materials to stock the school’s restrooms all times with an adequate supply of menstrual products:

1. The total number of schools in the claimant’s jurisdiction that maintain any combination of classes from grades 6 through 12, inclusive.
2. The total number of Title 1 schools in the claimant’s jurisdiction identified in #1 above, that met the 40 percent pupil poverty level and were required to comply with former Education Code section 35292.6 (Stats. 2017, ch. 687).
3. For *each* Title 1 school that met the 40-percent pupil poverty level, as defined, and were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687), please identify:
  - the total number of all restrooms in the school,
  - the total number of women’s restrooms in the school, and
  - the total number of all-gender restrooms in the school.
4. For *each* school that did **not** meet the 40-percent pupil poverty level under prior law, please identify:
  - the total number of women’s restrooms in the school, and
  - the total number of all-gender restrooms in the school.<sup>72</sup>

Both Finance and the claimant propose adding information to these reporting requirements.

- a. There is no evidence in the record to support Finance’s request for the Parameters and Guidelines to require identifying the number of men’s restrooms with the other information required to be reported with the reimbursement claim, so this request is denied.

In response to the Draft Expedited Parameters and Guidelines, Finance suggests, without explanation, that “Claimants should be required to specify the total number of

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<sup>72</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024, page 7.

men’s restrooms in the school regardless of their compliance with the previous test claim, to ensure compliance with the test claim statute.”<sup>73</sup> Given the requirement to stock only one men’s restroom per reported (grade 6-12) school with menstrual products, and that the Draft Expedited Parameters and Guidelines require reporting the number of grade 6-12 schools in the claimant’s jurisdiction, it is unclear why reporting the total number of men’s restrooms per school would be relevant or reasonably necessary.

Consistent with the Test Claim Decision, the Draft Expedited Parameters and Guidelines define the number of additional restrooms required to be stocked as Title 1 schools that met the 40 percent pupil poverty level and were required to comply with prior law as “the sum of all women’s restrooms and all-gender restrooms, and at least one men’s restroom, minus 50 percent of all restrooms (which is not new because it was required by prior law).”<sup>74</sup> Thus, the Parameters and Guidelines require a claimant to identify the number of women’s restrooms and the number of all-gender restrooms in the school, then add one men’s restroom and subtract 50 percent of the total number of restrooms in the school to isolate the higher level of service, resulting in this formula:

$$(\text{all women's restrooms}) + (\text{all all-gender restrooms}) + (\text{one men's room}) - (\text{50\% of all restrooms}) = (\text{all new restrooms required to be stocked}).$$

For example, if a school has a total of eight restrooms, four of which are women’s restrooms and one of which is an all-gender restroom, then that school would be required to stock menstrual products in two additional restrooms as follows: (4 + 1 + 1 male restroom – (50% of 8 = 4)) = 2 new restrooms to be stocked).

The Draft Expedited Parameters and Guidelines also authorize reimbursement for non-Title 1 schools that did *not* meet the 40-percent pupil poverty level under prior law that are now required to stock all women’s restrooms, any all-gender restrooms, and one male restroom with menstrual products.<sup>75</sup> The claimants would identify the total number of women’s restrooms and all-gender restrooms, and stock one additional men’s restroom. Thus, like the example above (except not subtracting 50 percent of all restrooms), the school is now required to stock six restrooms with menstrual products (4 + 1 + 1 = 6 restrooms to be stocked).

There is no evidence in the record to show that requiring the claimants to identify the total number of men’s restrooms is reasonably necessary or relevant. Therefore, Finance’s request, to specify the total number of men’s restrooms in the school regardless of compliance with the previous test claim, is denied.

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<sup>73</sup> Exhibit D, Finance Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>74</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024, page 7.

<sup>75</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024, page 8.

- b. To support the actual costs claimed, the Proposed Parameters and Guidelines also require all the claimants to provide each school’s total enrollment of female pupils and its estimate of the total enrollment of transgender, nonbinary, and gender nonconforming pupils who may use menstrual products in grades 6 to 12.

The claimant also requests that the number of dispensers eligible for reimbursement should be based, in part, on the school’s total enrollment of *female* pupils in grades 6 to 12 for each claim year with the following proposed language:

The sufficient number of dispensers necessary to stock the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and *the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.*<sup>76</sup>

The Commission agrees that determining the adequate supply of menstrual products and dispensers to provide those products in accordance with the mandate depends on the enrollment of pupils in grades 6 to 12 that may use those products, the number of products those pupils may use each school year,<sup>77</sup> and the number of restrooms now required to be stocked. In this respect, the Parameters and Guidelines for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, defined a “sufficient amount” of menstrual products and dispensers as:

The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

[¶] . . . [¶]

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<sup>76</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2. Emphasis added.

<sup>77</sup> The Commission’s Statewide Cost Estimate for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, estimated that each pupil used three products per day for five days a week for each month of the school year, or 138 products per pupil per year, based on information from the Food and Drug Administration and Planned Parenthood. (Exhibit X (5), Commission on State Mandates, Statewide Cost Estimate on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted December 4, 2020, [https://csm.ca.gov/decisions/18-TC-01\\_120920.pdf](https://csm.ca.gov/decisions/18-TC-01_120920.pdf) (accessed on April 26, 2024), pages 14-15.) The Legislature used those figures when estimating the costs of the mandate. (Exhibit A, Test Claim Decision, adopted March 22, 2024, page 9 (citing to Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2). See also, Exhibit X (7), “The Menstrual Equity for All Act; A Handbook for California Public School Districts, January 2023”, [https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook\\_Final.pdf](https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook_Final.pdf) (accessed on April 26, 2024), page 16, which estimated average usage at three products per pupil per month.

The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.<sup>78</sup>

And the Parameters and Guidelines for 18-TC-01 require the claimants to identify “each school's total enrollment of female pupils in grades 6 to 12 in the claim year.”<sup>79</sup>

However, the mandate in this case is not limited to providing menstrual products to only female pupils. The test claim statute is intended to provide menstrual products “at all times” to all genders, including transgender men, nonbinary, and gender nonconforming students, who may also menstruate. As indicated in the Test Claim Decision, the Legislature made the following findings and declarations in the Menstrual Equity for All Act:

- California has an interest in promoting gender equity, not only for women and girls, but also for transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products.
- Equal opportunity to education is a fundamental right recognized by the California Constitution. Section 5 of Article IX of, subdivision (a) of Section 7 of Article I of, and subdivision (a) of Section 16 of Article IV of, the California Constitution require the state to maintain and operate the public school system in a manner that provides basic educational equity to students.
- California has an interest in creating safe, welcoming, and inclusive schools for all students. Subdivision (b) of Section 201 of the Education Code, in particular, requires all preschool, elementary, and secondary schools to affirmatively combat racism, sexism, and other forms of bias.
- The provision of menstrual products in schools helps ensure California provides equal access to education and enables students to reach their full potential, irrespective of gender.

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<sup>78</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019, <https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed on April 26, 2024), pages 25, 26.

<sup>79</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019, <https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed on April 26, 2024), page 24.

- Expanding student access to menstrual products can result in increased attendance rates. After the City of New York passed a law providing free menstrual products to students, participating schools saw a 2.4 percent increase in attendance.
- It is the intent of the Legislature that this act provide for the health, dignity, and safety of menstruating students at every socioeconomic level, normalize menstruation among all genders . . . .<sup>80</sup>

Thus, the mandated program will result in increased costs because additional pupils are required to have free access to menstrual products in the additional (men’s and all-gender) restrooms required to be stocked “at all times.”

Enrollment information identifying the number of transgender, nonbinary, and gender nonconforming pupils is not widely available. The Office of the Legislative Analyst estimated that less than one percent of the population aged 13 years and over identify as transgender, and that transgender and nonbinary persons generally comprise similarly small shares of pupils in the public education system:

While there is limited data on the number of transgender and nonbinary persons in California, the Williams Institute at the University of California, Los Angeles School of Law estimates about 200,000 of the state’s 33 million population aged 13 years and over (less than 1 percent) identify as transgender. Transgender and nonbinary persons generally comprise similarly small shares of students and staff in California’s public education system and people enrolled in the state’s publicly funded health programs.<sup>81</sup>

The Assembly Appropriations Committee analysis of the test claim statute compared costs for this program to those of the *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01 mandate, estimating an increase of ten percent to the total cost per pupil:

One-time Proposition 98 GF [general fund] costs of about \$2 million to LEAs [Local Education Agencies or School Districts] to install or modify menstrual product dispensers and ongoing Proposition 98 GF costs of about \$1.3 million to provide free menstrual products. This estimate use [sic] assumptions from the Commission on State Mandates (CSM) evaluation of the cost per female student at certain K-12 schools to provide free menstrual products in 50% of restrooms, as required by current law (described in more detail below). According to that evaluation, costs are \$3.70 per female student one-time to install or retrofit menstrual

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<sup>80</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 7-8 (citing to Stats. 2021, ch. 664, § 1).

<sup>81</sup> Exhibit X (6), Legislative Analyst’s Office, Letter to Attorney General Rob Bonta regarding a proposed ballot measure, November 14, 2023, <https://lao.ca.gov/ballot/2023/230519.pdf> (accessed on April 25, 2024), page 2.

product dispensers and about \$2.36 per female student annually to provide free menstrual products. *However, the costs of this bill would likely be slightly higher because it requires all gender restrooms and one men’s restroom to supply free menstrual products. Accordingly, this analysis increases by 10% the amount of one-time and ongoing costs, though there may be additional costs of an unknown amount.*

According to data from the California Department of Education, about 1.2 million females enrolled in grades 6-12 in the 2018-19 school year. Subtracting the number of students already receiving free menstrual products through existing law, about 500,000 female students remain.<sup>82</sup>

And the “The Menstrual Equity for All Act; A Handbook for California Public School Districts” estimates that “50% of students at each school menstruate.”<sup>83</sup> Therefore, to support the actual cost for labor and materials claimed as a result of this mandate, the Parameters and Guidelines require the claimants to provide each school’s total enrollment of female pupils and its estimate of the total enrollment of transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 in the claim year that may use menstrual products.

Accordingly, Section IV. of the Parameters and Guidelines is revised as follows (with changes in underline and strikeout to reflect changes to the Draft Expedited Parameters and Guidelines):

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

A. Stocking an Adequate Supply of Menstrual Products Free of Cost for Pupils

1. For schools that met the 40-percent pupil poverty level that were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687),<sup>84</sup> to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in *additional* restrooms, defined as the sum of all women’s restrooms and all-gender

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<sup>82</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 8 (citing Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2). Emphasis added.

<sup>83</sup> Exhibit X (7), “The Menstrual Equity for All Act; A Handbook for California Public School Districts, January 2023”, [https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook\\_Final.pdf](https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook_Final.pdf) (accessed on April 26, 2024), page 15.

<sup>84</sup> These schools are those that are eligible for Title I, Part A funds and meet the second test identified in section 6314(a)(I)(A) of Title 20 of the United States Code, in which not less than 40 percent of the children *enrolled* in the school are from low-income families. See Exhibit A, Test Claim Decision, adopted March 22, 2024, page 20.

restrooms, ~~and at least~~ plus one men's restroom, **minus** 50 percent of all restrooms (which is not new because it was required by prior law).

Eligible claimants are **not** entitled to reimbursement under these Parameters and Guidelines for the activities and costs approved by the Commission in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, which addressed Education Code section 35292.6 (Stats. 2017, ch. 687). Those costs ~~can~~ may be claimed under *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

2. For schools that did **not** meet the 40-percent pupil poverty level subjecting them to the *Feminine Hygiene Products* mandate under prior law, to stock all women's restrooms and ~~any~~ all-gender restrooms, ~~and at least plus~~ one men's restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.
- ~~3. For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.~~
3. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for menstrual products (defined only as tampons and sanitary napkins) in the new or additional restrooms identified in IV.A. 1 and 2 above.

Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.

**Reimbursement is not required to stock any products other than menstrual pads and tampons for pupils, or to stock menstrual products in more than one men's restroom per school.**

An adequate supply of menstrual products and dispensers to comply with Section IV.A.1 and 2 of these Parameters and Guidelines may be determined based on the enrollment of female, transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 that may use those products each claim year, the estimated number of products those pupils may use each claim year; and the number of restrooms now required to be stocked.

In the reimbursement claims, claimants shall identify:

- a. ~~1.~~The total number of schools in the claimant's jurisdiction that maintain any combination of classes from grades 6 through 12, inclusive.
- b. For each school identified in a. above, provide the total enrollment of female, and the estimated total enrollment of transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 in the claim year that may use the menstrual products required by the test claim statute.
- c. ~~2.~~The total number of Title 1 schools in the claimant's jurisdiction identified in ~~#1~~ a. above, that met the 40 percent pupil poverty level and were required to comply with former Education Code section 35292.6 (Stats. 2017, ch. 687).
- d. ~~3.~~For *each* Title 1 school that met the 40-percent pupil poverty level, as defined, and were required to comply with ~~prior law~~ (former ~~Ed.~~ Education Code, section § 35292.6 (Stats. 2017, ch. 687), please identify:
  - the total number of all restrooms in the school,
  - the total number of women's restrooms in the school,
  - the total number of all-gender restrooms in the school.
- e. ~~4.~~For *each* school that did **not** meet the 40-percent pupil poverty level under prior law, please identify:
  - the total number of women's restrooms in the school, and
  - the total number of all-gender restrooms in the school.

#### B. Posting a Notice

1. ~~3.~~ For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.

#### **D. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement.

No changes to the boilerplate language were proposed.

**E. Offsetting Revenues and Reimbursements (Section VII. Offsetting Revenues and Reimbursements)**

Section VII. of the Parameters and Guidelines governs offsetting revenues (i.e., funds that are not a claimant’s proceeds of taxes) required to be identified and deducted from the costs claimed.

No changes to the boilerplate language were proposed.

**F. The Remaining Sections of the Parameters and Guidelines**

Section VI. Record Retention; Section VIII. State Controller’s Claiming Instructions; Section IX. Remedies Before the Commission; and Section X. Legal and Factual Basis for the Parameters and Guidelines contain standard boilerplate language.

**V. Conclusion**

Based on the foregoing analysis, the Commission hereby adopts the Proposed Decision and Parameters and Guidelines.

**PARAMETERS AND GUIDELINES<sup>85</sup>**

Education Code Section 35292.6

Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367)

*Public School Restrooms: Menstrual Products*

22-TC-04

Period of Reimbursement begins January 1, 2022

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**I. SUMMARY OF THE MANDATE**

These Parameters and Guidelines address the Menstrual Equity for All Act of 2021 (Stats. 2021, ch. 664, Ed. Code, §35292.6), effective January 1, 2022. The Act requires public schools, including a school operated by a school district, a county office of education, or a charter school, that maintain any combination of classes from grades 6 through 12, inclusive, to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom with menstrual products (defined as tampons and menstrual pads), free of cost, on or before the start of the 2022-2023 school year. The Act also requires these public schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock the menstrual products.

On March 22, 2024, the Commission on State Mandates (Commission) adopted its Test Claim Decision, finding that the test claim statute (Ed. Code, § 35292.6, Stats. 2021, ch. 664), imposes a reimbursable state-mandated program within the meaning of article XIII

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<sup>85</sup> Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

B, section 6 of the California Constitution and Government Code section 17514, beginning January 1, 2022, on school districts, including county offices of education, for their schools that maintain any combination of classes from grades 6 through 12, inclusive, to do the following:

1. For schools that met the 40-percent pupil poverty level that were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687), to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in additional restrooms, defined as the sum of all women's restrooms and all-gender restrooms, and at least one men's restroom, *minus* 50 percent of all restrooms (which is not new because it was required by prior law).
2. For schools that did **not** meet the 40-percent pupil poverty level under prior law, to stock all women's restrooms and any all-gender restrooms, and at least one men's restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.
3. For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.

## **II. ELIGIBLE CLAIMANTS**

Any "school district" as defined in Government Code section 17519, except for community colleges, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the Test Claim on May 12, 2023, establishing eligibility for reimbursement for the 2021-2022 fiscal year. However, the test claim statute was effective on January 1, 2022. Therefore, based on the later effective date of the statute, costs incurred are reimbursable on or after January 1, 2022.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.

3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

##### A. Stocking an Adequate Supply of Menstrual Products Free of Cost for Pupils.

1. For schools that met the 40-percent pupil poverty level that were required to comply with prior law (former Ed. Code, § 35292.6, Stats. 2017, ch. 687),<sup>86</sup> to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, in *additional* restrooms, defined as the sum of all women’s restrooms and all-gender restrooms, ~~and at least plus~~ one men’s restroom, **minus** 50 percent of all restrooms (which is not new because it was required by prior law).

Eligible claimants are **not** entitled to reimbursement under these Parameters and Guidelines for the activities and costs approved by the Commission in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, which addressed Education Code section 35292.6 (Stats. 2017, ch. 687). Those costs ~~can~~ may be claimed under *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

2. For schools that did **not** meet the 40-percent pupil poverty level subjecting them to the *Feminine Hygiene Products* mandate under prior law, to stock all women’s restrooms and ~~any~~-all-gender restrooms, ~~and at least plus~~ one men’s restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.
- ~~3. For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.~~
3. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for menstrual products (defined only as tampons and sanitary napkins) in the new or additional restrooms identified in IV.A. 1 and 2 above.

Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.

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<sup>86</sup> These schools are those that are eligible for Title I, Part A funds and meet the second test identified in section 6314(a)(1)(A) of Title 20 of the United States Code, in which not less than 40 percent of the children *enrolled* in the school are from low-income families. Exhibit A, Test Claim Decision, adopted March 22, 2024, page 20.

**Reimbursement is not required to stock any products other than menstrual pads and tampons for pupils, or to stock menstrual products in more than one men's restroom per school.**

An adequate supply of menstrual products and dispensers to comply with Section IV.A.1 and 2 of these Parameter and Guidelines may be determined based on the enrollment of female, transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 that may use those products each claim year, the estimated number of products those pupils may use each claim year; and the number of restrooms now required to be stocked.

In the reimbursement claims, claimants shall identify:

- a. ~~1.~~The total number of schools in the claimant's jurisdiction that maintain any combination of classes from grades 6 through 12, inclusive.
- b. For each school identified in a. above, provide the total enrollment of female, and estimated total enrollment of transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 in the claim year that may use the menstrual products required by the test claim statute.
- c. ~~2.~~The total number of Title 1 schools in the claimant's jurisdiction identified in ~~#1~~ a. above, that met the 40 percent pupil poverty level and were required to comply with former Education Code section 35292.6 (Stats. 2017, ch. 687).
- d. ~~3.~~For *each* Title 1 school that met the 40-percent pupil poverty level, as defined, and were required to comply with ~~prior law~~ (former Ed Education Code, section § 35292.6 (Stats. 2017, ch. 687), please identify:
  - the total number of all restrooms in the school,
  - the total number of women's restrooms in the school,
  - the total number of all-gender restrooms in the school.
- e. ~~4.~~For *each* school that did **not** meet the 40-percent pupil poverty level under prior law, please identify:
  - the total number of women's restrooms in the school, and
  - the total number of all-gender restrooms in the school.

**B. Posting a Notice.**

1. For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate,

indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter<sup>87</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, state and federal funds, any service charge, fee, or assessment authority to offset all or part of the costs of this program, and any other funds, shall be identified and deducted from any claim submitted for reimbursement.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local governments in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the eligible claimants to file

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<sup>87</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

reimbursement claims, based upon parameters and guidelines adopted by the Commission.

#### **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of an eligible claimant, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and interested parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

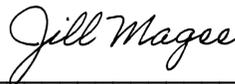
On May 10, 2024, I served the:

- **Current Mailing List dated May 10, 2024**
- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued May 10, 2024**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367);  
Education Code Section 35292.6  
Hesperia Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 10, 2024 at Sacramento, California.



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Jill Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/10/24

**Claim Number:** 22-TC-04

**Matter:** Public School Restrooms: Menstrual Products

**Claimant:** Hesperia Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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**RECEIVED**  
May 31, 2024  
**Commission on  
State Mandates**

MALIA M. COHEN  
CALIFORNIA STATE CONTROLLER

## Exhibit G

May 31, 2024

Heather Halsey, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**SUBJECT: Draft Proposed Decision and Parameters and Guidelines, Schedule for  
Comments, and Notice of Hearing**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective  
January 1, 2022  
Hesperia Unified School Districts, Claimant

Dear Heather Halsey:

The State Controller's Office reviewed the Draft Proposed Decision and Parameters and Guidelines for Public School Restrooms: Menstrual Products, and recommend no changes.

If you have any questions, please contact Linda Wong, Local Reimbursements Section, Local Government Programs and Services Division, by email at [lwong@sco.ca.gov](mailto:lwong@sco.ca.gov), or by telephone at (916) 229-8037.

Sincerely,

*Everett Luc*

Everett Luc  
Supervisor, Local Reimbursements Section

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 31, 2024, I served the:

- **Current Mailing List dated May 28, 2024**
- **Controller's Comments on the Draft Proposed Decision and Parameters and Guidelines filed May 31, 2024**

*Public School Restrooms: Menstrual Products, 22-TC-04*  
Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367);  
Education Code Section 35292.6  
Hesperia Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 31, 2024 at Sacramento, California.



David Chavez  
Commission on State Mandates  
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## COMMISSION ON STATE MANDATES

### Mailing List

**Last Updated:** 5/28/24

**Claim  
Number:** 22-TC-04

**Matter:** Public School Restrooms: Menstrual Products

**Claimant:** Hesperia Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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## Exhibit H

Home / Learning Support / School Facilities / School Facility Design

# K-12 Toilet Requirement Summary

A summary of K-12 toilet requirements by grade level and male/female.

The California Building Standards Codes (California Code of Regulations, Title 24), of which the California Plumbing Code is one part, is revised on a triennial calendar. The California Building Standards Codes become effective on January 1 of the following year that it is published (the 2019 became effective January 1, 2020).

Schools are considered an Educational (E) occupancy for determining the number of toilets, urinals, lavatories, and drinking fountains within the *California Plumbing Code*.

### 2013 - present (includes 2013, 2016 and 2019 editions)

All Grades and Staff	Toilets and Urinals	Lavatories	Drinking Fountains
<b>Male</b>	1 toilet per 50 1 urinal per 100	1 per 40	1 per 150
<b>Female</b>	1 toilet per 30	1 per 40	1 per 150

The figures shown are based upon one fixture being the minimum required for the number of persons indicated or any fraction thereof.

The total number of required toilets for females shall not be less than the total number of required toilets and urinals for males. This requirement shall not apply when single occupancy toilet facilities are provided for each gender in an E occupancy with an occupant load of less than 50. Either:

1. The required urinal shall be permitted to be omitted or
2. If installed, the urinal shall not require a second toilet be provided for the female.

California Department of Education (CDE) Notes:

*California Code of Regulations, Title 5, Section 14030*, requires that toilets for kindergarten students be provided in the kindergarten classroom or in the kindergarten complex. These fixtures should be mounted at a height appropriate for student use.

The California Plumbing Code does not require specific toilets for staff and students. However, for safety and liability concerns CDE recommends that separate toilets be provided for staff.

CDE recommends that the location of toilets and water fountains be distributed throughout the campus to ensure access.

The entrance to toilet rooms must be able to be supervised.

[2013 California Plumbing Code - Chapter 4 Plumbing Fixtures and Fixture Fittings](#)  (PDF)

**2010 (between 1994 and the 2010 code)**

**Male**

<b>Grade/Staff</b>	<b>Water Closets (Fixtures per person) <u>14</u></b>	<b>Urinals (Fixtures per person) <u>5, 10</u></b>	<b>Lavatories (Fixtures per person)</b>	<b>Drinking Fountains (Fixtures per person) <u>3, 13, 18</u></b>
<b>Kindergarten (toilets to be within kindergarten complex)</b>	1 toilet serves 1-20 2 toilets serve 21-50  Over 50, add 1 toilet for every 50 people	None	1 serves 1-25 2 serves 26-50  Over 50, add 1 fixture for each additional 50 persons	1 per 150 ( <u>12</u> )
<b>Elementary</b>	1 toilet per 30	1 per 75	1 per 35	1 per 150 ( <u>12</u> )
<b>Secondary</b>	1 toilet per 40	1 per 35	1 per 40	1 per 150 ( <u>12</u> )
<b>Staff</b>	1 toilet serves 1-15 2 toilets serve 16-35 3 toilets serve 36-55  Over 55, add 1 fixture for each additional 40 persons	1 per 50	1 per 40	No reference

**Female**

<b>Grade/Staff</b>	<b>Water Closets (Fixtures per person) <u>14</u></b>	<b>Lavatories (Fixtures per person)</b>	<b>Drinking Fountains (Fixtures per person) <u>3, 13, 18</u></b>
<b>Kindergarten (toilets to be within kindergarten complex)</b>	1 toilet serves 1-20  2 toilets serve 21-50  Over 50, add 1 toilet for every 50 people	1 serves 1-25  2 serves 26-50  Over 50, add 1 fixture for each additional 50 persons	1 per 150 ( <u>12</u> )
<b>Elementary</b>	1 toilet per 25	1 per 35	1 per 150 ( <u>12</u> )
<b>Secondary</b>	1 toilet per 30	1 per 40	1 per 150 ( <u>12</u> )
<b>Staff</b>	1 toilet serves 1-15  2 toilets serve 16-35  3 toilets serve 36-55  Over 55, add 1 fixture for each additional 40 persons	1 per 40	No reference

**Footnotes**

<sup>3</sup> Drinking fountains shall not be installed in toilet rooms.

<sup>5</sup> For each urinal added in excess of the minimum required, one water closet may be deducted. The number of water closets shall not be reduced to less than two-thirds ( $2/3$ ) of the minimum requirement.

<sup>10</sup> General. In applying this schedule of facilities, consideration shall be given to the accessibility of the fixtures. Conformity purely on a numerical basis may not result in an installation suited to the needs of the individual establishment. For example, schools should be provided with toilet facilities on each floor having classrooms.

- a. Surrounding materials, wall and floor space to a point two feet in front of urinal lip and four feet above the floor, and at least two feet to each side of the urinal shall be lined with non-absorbent materials.
- b. Trough urinals shall be prohibited.

<sup>12</sup> Where food is consumed indoors, water stations may be substituted for drinking fountains. Offices or public buildings for use by more than six persons shall have one drinking fountain for the first 150 persons and one additional fountain for each 300 persons thereafter.

<sup>13</sup> There shall be a minimum of one drinking fountain per occupied floor in schools, theaters, auditoriums, dormitories, offices, or public buildings.

<sup>14</sup> The total number of water closets for females shall be at least equal to the total number of water closets and urinals required for males. This requirement shall not apply to retail or wholesale stores.

<sup>18</sup> A drinking fountain shall be required in occupancies of 30 or less. When a drinking fountain is not required, then footnotes 3, 12, and 13 are not applicable.

**Note**

Please be aware these are minimum requirements; more fixtures or toilet rooms may be required to adequately serve students and staff in some facility layouts.

Toilets are to be provided based on the population of each gender at each school site. As new facilities (with additional students and staff) are added, including portables, additional toilet facilities should be added to meet building code requirements.

**Prior to 1994**

<b>Grade/Staff</b>	<b>Male</b>	<b>Female</b>
<b>Kindergarten</b>	No reference	No reference
<b>Elementary</b>	1 urinal per 30 1 toilet per 100	1 toilet per 35
<b>Secondary</b>	1 urinal per 30 1 toilet per 100	1 toilet per 45
<b>Staff</b>	No reference	No reference

**Questions: School Facilities & Transportation Services Division | [sftsd@cde.ca.gov](mailto:sftsd@cde.ca.gov) | 916-322-2470**

Last Reviewed: Thursday, July 13, 2023

**LAW OFFICES OF ARTHUR M. PALKOWITZ**  
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**[law@artpalk.onmicrosoft.com](mailto:law@artpalk.onmicrosoft.com)**  
**Phone: 858.259.1055**



August 17, 2023

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Test Claim: Public School Restrooms:  
Feminine Hygiene Products II (22-TC-04)

Dear Ms. Halsey:

Hesperia Union School District (“Claimant”) has reviewed the Department of Finance (“Finance”) comments dated July 20, 2023, in response to the Test Claim 22-TC-04, submitted to the Commission on State Mandates (Commission) by the Claimant. Claimant provides the following rebuttal comments.

A. Introduction

The test claim alleges state-mandated, reimbursable costs associated with Chapter 664, Statutes of 2021 (AB 367), that requires public schools maintaining any combination of classes from grades 6 to 12, inclusive, to stock all women’s and all-gender restrooms, and at least one men’s restroom, with an adequate supply of menstrual products, defined as menstrual pads and tampons, that are available and accessible, and free of cost, at all times.

1. Commission Previously Approved Test Claim for Menstrual Products

The test claim Public School Restrooms: Feminine Hygiene Products 18-TC-01 was unanimously approved by the Commission on May 24, 2019.  
([https://www.csm.ca.gov/decisions/18-tc-01\\_decision.pdf](https://www.csm.ca.gov/decisions/18-tc-01_decision.pdf).)

The Commission decided Education Code section 35292.6, as added by Statutes 2017, chapter 687, constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, for school districts with schools identified below to stock 50 percent of such schools’ restrooms with feminine hygiene products

(defined as tampons and sanitary napkins) at all times at no cost to pupils. The mandate applies to those schools that maintain any combination of classes from grade 6 to grade 12, inclusive; and meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families. (Decision p. 2.)

## *2. Current Test Claim Broadens the Requirement to Provide Menstrual Products*

The current test claim broadens the requirements for public schools maintaining any combination of classes from grades 6 to 12, inclusive, to stock all women's and all-gender restrooms, and at least one men's restroom, with an adequate supply of menstrual products, defined as menstrual pads and tampons, that are available and accessible, and free of cost, at all times.

The new test claim statute required Claimant to install dispensers in an additional 100 restrooms. Prior to the new test claim statute Claimant installed dispensers in 50 bathrooms. (See Dr. George Landon declaration; Restrooms at Claimant's Schools: Exhibit "A") Exhibit "A" lists the number of restrooms for Claimant's twenty-four schools for the 2022-2023 school year as follows: number of girls' restrooms (68); number of boys' restrooms (54); number of all-gender restrooms (28); number of total restrooms (150) and the number of total restrooms previously equipped with dispensers (50). Directly related to AB 367 Claimant incurred increased costs for 100 additional restrooms be equipped with dispensers.

Claimant has not included in their increased costs dispensers installed prior to the enactment of AB 367. The selection of dispensers was determined by Claimant's Director of Risk Management and third-party vendor as the most efficient and cost-effective method for delivering the required menstrual products. Claimant's removed increased costs submitted in the amount of \$365.45 for "Kleenex" products.

## *3. Commission Decided Dispensers are Suitable and Reasonable*

Test Claim 18-TC-01 required Claimant to install dispensers in restrooms as a reasonable delivery method to provide an adequate supply of menstrual products.

"that using appropriately configured dispensers is reasonably necessary for the performance of the state-mandated activity." Parameters and Guidelines ("P & G's") further stated "if some schools were already equipped with a sufficient number of suitable dispensers in their restrooms, they would not need to incur increased costs to buy new dispensers. In addition, some schools may have existing dispensers, including coin dispensers, that can be repaired or modified to provide the feminine hygiene products at no cost to the pupils and at a fraction of the cost to purchase new dispensers. Under these circumstances, it would only be necessary to repair or retrofit the dispensers to comply with the mandate and would not be necessary to incur increased costs to buy all new dispensers." (Parameters and Guidelines ("P & G") p.16.)

<https://www.csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf>.)

The Commission should approve the test claim and the reimbursement of dispensers and menstrual products may be decided during the P & G process.

4. *K-12 Mandate Block Grant Fails To Include Ongoing Funding for Costs Related To The New Test Claim.*

The State provides funding in a lump sum for the Mandate Block Grant and does not break down the funding for each mandate. There are approximately forty-nine mandates included in the mandate block grant. (<https://www.cde.ca.gov/fg/fo/r14/mandatebg23list.asp>.) The amount of funding Claimant received from the Mandate Block Grant is insufficient to cover the increased costs incurred from the mandates.

5. *Finance's Comments Fail To Comply With Statutory Requirements.*

Oral or written representations of fact offered by any person *shall* be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information, or belief. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) (emphasis added.) If representations of fact are made, they *must* be supported with documentary evidence filed with the comments on the test claim. (Cal. Code. Regs., tit. 2 §§ 1183.2 and 1187.5.) (emphasis added.)

Finance comments fail to include the required oath and affirmation. Nor were the comments supported with documentary evidence. Accordingly, Commission shall disregard comments submitted by Finance.

B. Conclusion

The facts are similar to the test claim previously approved by the Commission. The test claim statute imposes on school districts, a public agency, a new program or higher level of service. The Commission must approve the test claim and reimbursement of dispensers and menstrual products may be decided during the P & G process.

C. Certification

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.

August 17, 2023

  
Arthur M. Palkowitz  
Representative for the Claimant

**Test Claim: Public School Restrooms:  
Feminine Hygiene Products II (22-TC-04)**  
**Claimants: Hesperia Unified School District**  
**Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,  
Hesperia Unified School District**

**SECTION NUMBER: 6**  
**Heading: DECLARATION**

I, Dr. George Landon, Deputy Superintendent, Business Service, Hesperia Unified School District (“District”) declare as follows:

1. I am currently employed with the District, and I have personal knowledge of the actual and estimated costs incurred by the District for the Public School Restrooms: Feminine Hygiene Products II (“FHP II”) program commencing on July 1, 2022. The information contained in my declaration is from preparing and reviewing District business records my personal knowledge and information or belief pertaining to the FHP II program.

2. The new requirements included in the test claim statute Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d) and Education Code Section 35292.6 (a),(b),(c),(d) include the following:

a) On or before the start of the 2022–23 school year, a public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, shall stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom.

(b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils.

(c) A public school described in subdivision (a) shall post a notice regarding the requirements of this section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost, pursuant to this section. This notice shall include the text of this section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.

(d) For purposes of this section, “menstrual products” means menstrual pads and tampons for use in connection with the menstrual cycle.

(e) This section shall become operative on July 1, 2022.

**Test Claim: Public School Restrooms:**

**Feminine Hygiene Products II (22-TC-04)**

**Claimants: Hesperia Unified School District**

**Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,  
Hesperia Unified School District**

**3. The new activities performed, or to be performed, to implement the specified provisions of the new test claim statute alleged to impose the reimbursable mandate, Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(c),(d) include the following:**

**(i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products; (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)**

**(ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the schools' restrooms; (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)**

**(iii)The purchasing and installing dispensers in the schools' restrooms. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)**

**(iv)The purchasing of the menstrual products and stocking the schools' restrooms with menstrual products at all times. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)**

**4. The increased costs for complying with the test claim statute Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(c),(d) for 2022-2023 are as follows:**

**(i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products. (\$ -0-.)**

**(ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the schools' restrooms. (\$-0-.)**

**(iii) The cost of purchasing and installing dispensers in the schools' restrooms. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)**

Test Claim: Public School Restrooms:  
Feminine Hygiene Products II (22-TC-04)  
Claimants: Hesperia Unified School District  
Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,  
Hesperia Unified School District

Increased cost of purchasing Dispensers during FY 2022-2023

EVOGEN EVI- DISPENSER (59 UNITS)	\$22,090.81	August 5, 2022
EVOGEN EVI- DISPENSER (41 UNITS)	<u>\$15,351.24</u>	September 16, 2022

Increased cost of dispensers. \$37,442.05

(PSR Menstrual 022; 024.)

Increased cost of installing Dispensers- Labor Cost

Director of Risk Management - Hourly Rate \$77.78  
Custodial Supervisor - Hourly Rate \$49.14  
Time to install for both employees - 20 hours.

Labor Hour Cost ( $\$77.78 + \$49.14 = \$126.92$ ) @ 20 hours is \$2,538.40 plus 30% for statutory costs = \$3,299.92

The selection of dispensers was determined by the Claimant's Director of Risk Management and third-party vendor as the most efficient and cost-effective method for delivering the menstrual products.

For 2022-2023 we provide the following information:

- a. Number of combination of classes was thirteen for grades 5-6 at the District's elementary schools.
- b. Number of girls' restrooms at the District's twenty-four schools totaled 68.
- c. Number of all-gender restrooms at the District's twenty-four totaled 28.
- d. Number of boys restrooms at the District's twenty-four schools totaled 54.

Prior to AB 367 we provide the following information:

- e. Number of combination of classes was thirteen for grades 5-6 at the District's elementary schools.
- f. Number of girls' and all gender restrooms at the District's twenty-four schools totaled 50.

(See Restrooms at Claimant's Schools: Exhibit "A")

The costs listed above are not related to the costs incurred for the prior mandate Public School Restrooms: Feminine Hygiene Products Mandate. (18-TC-01)

**Test Claim: Public School Restrooms:**

**Feminine Hygiene Products II (22-TC-04)**

**Claimants: Hesperia Unified School District**

**Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,  
Hesperia Unified School District**

The State provides funding as a lump sum for the Mandate Block Grant and does not break down the funding for each mandate. There are approximately forty-nine mandates are included in the mandate block grant.

(<https://www.cde.ca.gov/fg/fo/r14/mandatebg23list.asp>.) The amount of funding Claimant received from the Mandate Block Grant is insufficient to cover the increased costs incurred from the State’s mandates including Public School Restrooms: Feminine Hygiene Products Mandate (18-TC-01) mandate.

(iv) The cost of purchasing the menstrual products and stocking the schools’ restrooms with menstrual products at all times are as follows: (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)

Increased costs for purchasing menstrual products during FY 2022-2023 are as follows:

MAXIPADS	\$79.22	August 8, 2022
MAXITHINS	101.69	August 8, 2022
TAMPAX	168.89	August 12, 2022
MAXITHINS	203.39	August 17, 2022
SANITAIRE 12IN	777.57	September 8, 2022
TAMPAX	255.63	September 8, 2022
NATURELLE MAXI ULTR THIN	426.50	September 8, 2022
NATURELLE TAMPONS	234.12	September 21, 2022
KOTEX ULTRA	184.15	November 14, 2022
MAXIPADS	<u>87.15</u>	December 14, 2022

Total menstrual products costs incurred. \$2,518.31  
(PSR Menstrual 014-021; 023; 025.)

The amount of \$365.45 for “Kleenex” was removed from the increased costs for menstrual products required by AB 367. The costs listed above are not related to the costs incurred for Public School Restrooms: Feminine Hygiene Products Mandate (18-TC-01) mandate.

The State provides funding as a lump sum for the Mandate Block Grant and does not break down the funding for each mandate. There are approximately forty-nine mandates are included in the mandate block grant.

(<https://www.cde.ca.gov/fg/fo/r14/mandatebg23list.asp>.)

Test Claim: Public School Restrooms:

Feminine Hygiene Products II (22-TC-04)

Claimants: Hesperia Unified School District

Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,  
Hesperia Unified School District

The amount of funding the Claimant received from the Mandate Block Grant is insufficient to cover the increased costs incurred from the State’s mandates including Public School Restrooms: Feminine Hygiene Products Mandate (18-TC-01) mandate.

4. The estimated increased costs for complying with the test claim statute for 2023-2024 are as follows:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products. (\$-0-)
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the schools’ restrooms. (\$ -0-)
- (iii) The cost of purchasing and installing dispensers in the schools’ restrooms. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).) (\$ -0-)
- (v) The cost of purchasing the menstrual products and stocking the schools’ restrooms with menstrual products at all times are as follows: (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3(a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).) \$2,518.31

5. I am unaware of any local, state, or federal funds or fee authority that may be used to offset the increased costs that will be incurred by claimant to implement the alleged mandate, including direct and indirect costs. Local agency (general) funds are available for this program.

6. I incorporate by reference my declaration dated June 5, 2023. (PSR Menstrual 012-015.)

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or based on information and belief and that I am authorized and competent to do so.

Dated: August 17, 2023

  
\_\_\_\_\_  
DECLARATION –DR. GEORGE LANDON  
DEPUTY SUPERINTENDENT, BUSINESS SERVICE,  
HESPERIA UNIFIED SCHOOL DISTRICT

n

**AB 10**

**AB 367**

	AB 10		AB 367			
	Girls & AG	Girls	Boys	AG	Total	Additional
<b>Elementary Schools</b>						
Carmel	2	2	1	1	4	2
Cottonwood	1	1	1	1	3	2
Cypress	4	3	1	1	5	1
Eucalyptus		2	2	1	5	5
Hollyvale	1	2	1	1	4	3
Joshua Circle	1	1	1	1	3	2
Juniper	1	1	1	1	3	2
Kingston	1	1	2	1	4	3
Krystal	1	1	1	1	3	2
Lime St.	2	1	1	0	2	0
Maple	1	1	2	1	4	3
Mesa Grande	2	0	1	1	2	0
Mesquite Trails	1	1	1	1	3	2
Mission Crest	1	2	1	1	4	3
Topaz	1	1	1	1	3	2
<b>Secondary Schools</b>						
Cedar	3	2	1	1	4	1
Hesperia Jr.	6	6	4	2	12	6
Rancho	3	4	6	2	12	9
Canyon Ridge	1	1	1		2	1
Hesperia High	5	11	5	3	19	14
Mojave High	2	4	4	4	12	10
Oak Hills	5	11	6	2	19	14
Shadow Ridge	1	3	3		6	5
Sultana	4	6	6		12	8
<b>Totals</b>	<b>50</b>	<b>68</b>	<b>54</b>	<b>28</b>	<b>150</b>	<b>100</b>

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

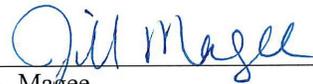
On August 17, 2023, I served the:

- **Current Mailing List dated August 7, 2023**
- **Claimant's Rebuttal Comments filed August 17, 2023**

*Public School Restrooms: Feminine Hygiene Products II, 22-TC-04*  
Statutes 2021, Chapter 664, Sections 1, 3 (AB 367); Education Code Section 35292.6; effective January 1, 2022  
Hesperia Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 17, 2023 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/7/23

**Claim Number:** 22-TC-04

**Matter:** Public School Restrooms: Feminine Hygiene Products II

**Claimant:** Hesperia Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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November 26, 2019

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*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Decision and Parameters and Guidelines**

*Public School Restrooms: Feminine Hygiene Products, 18-TC-01*  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

On November 22, 2019 the Commission on State Mandates adopted the Decision and Parameters and Guidelines on the above-captioned matter.

Please keep Decision and Parameters and Guidelines together as one document, as it together constitutes the entire decision of the Commission and the "Decision" portion informs the interpretation of the "Parameters and Guidelines." It is hoped that by providing the entire Decision and Parameters and Guidelines with the claiming instructions that claimants will be better equipped to correctly claim reimbursement, resulting in fewer reductions upon audit and fewer incorrect reduction claims.

Sincerely,

Heather Halsey  
Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

The period of reimbursement begins  
January 1, 2018.

Case No.: 18-TC-01

*Public School Restrooms: Feminine  
Hygiene Products*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted November 22, 2019)*

*(Served November 26, 2019)*

**PARAMETERS AND GUIDELINES**

The Commission on State Mandates adopted the attached Decision and Parameters and Guidelines on November 22, 2019.

  
Heather Halsey, Executive Director

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Education Code Section 35292.6  
Statutes 2017, Chapter 687 (AB 10)  
The period of reimbursement begins  
January 1, 2018.

Case No.: 18-TC-01

*Public School Restrooms: Feminine Hygiene  
Products*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500 ET  
SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted November 22, 2019)*

*(Served November 26, 2019)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on November 22, 2019. Arthur Palkowitz appeared on behalf of the Desert Sands Unified School District. Daniel Hanower appeared on behalf the Department of Finance (Finance).

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the Decision and Parameters and Guidelines, as modified, by a vote of 7-0, as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

**I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (AB 10), which requires certain Title I-eligible public schools that maintain any combination of classes from grade 6 to grade 12,

inclusive, to stock at all times and at no cost to pupils at least 50 percent of the school's restrooms with feminine hygiene products, which are defined as tampons and sanitary napkins.

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families, for such schools to:

- Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

## **II. Procedural History**

On May 24, 2019, the Commission adopted the Test Claim Decision.<sup>1</sup> On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>2</sup> On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)<sup>3</sup> filed comments on the Draft Expedited Parameters and Guidelines.<sup>4</sup> On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>5</sup> On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.<sup>6</sup> On June 18, 2019, the Department of Finance (Finance) filed late comments on the Draft Expedited Parameters and Guidelines.<sup>7</sup> On June 19, 2019, the claimant filed rebuttal comments.<sup>8</sup> On June 25, 2019, Finance filed revised late comments on the Draft Expedited Parameters and Guidelines to replace the June 19 comments which were inadvertently filed

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<sup>1</sup> Exhibit A, Test Claim Decision.

<sup>2</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>3</sup> California Code of Regulations, title 2, section 1181.2(j) defines "Interested person" as "any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter."

<sup>4</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

<sup>5</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>6</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>7</sup> Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>8</sup> Exhibit G, Claimant's Rebuttal Comments.

without being certified and signed under penalty of perjury.<sup>9</sup> On June 26, 2019, the claimant filed rebuttal comments.<sup>10</sup> On July 17, 2019, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.<sup>11</sup> On August 1, 2019, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines.<sup>12</sup> On September 11, 2019, Commission staff issued the Proposed Decision and Parameters and Guidelines for the September 27, 2019 hearing.<sup>13</sup> On September 18, 2019, the claimant filed late comments on the Proposed Decision and Parameters and Guidelines.<sup>14</sup> On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District.<sup>15</sup> This matter was then postponed to the Commission's November 22, 2019 hearing in order to prepare a Revised Draft Proposed Decision and Parameters and Guidelines for comment. On October 2, 2019, Commission staff issued the Revised Draft Proposed Decision and Parameters and Guidelines.<sup>16</sup> On October 18, 2019, the Controller filed comments on the Revised Draft Proposed Decision and Parameters and Guidelines, recommending no changes.<sup>17</sup> Neither the claimant nor Finance filed comments on the Revised Draft Proposed Decision and Parameters and Guidelines.

### **III. Positions of the Parties**

#### **A. Desert Sands Unified School District**

The claimant's comments on the Draft Expedited Parameters and Guidelines propose several changes to the Proposed Parameters and Guidelines which include reimbursement for purchasing and installing dispensers, and for developing policies and procedures.<sup>18</sup>

The claimant proposes the following amendments to Section IV. of the Proposed Parameters and Guidelines describing reimbursable activities (with amendments in bold italics):

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<sup>9</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>10</sup> Exhibit I, Claimant's Rebuttal Comments.

<sup>11</sup> Exhibit J, Draft Proposed Decision and Parameters and Guidelines.

<sup>12</sup> Exhibit K, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

<sup>13</sup> Exhibit L, Proposed Decision and Parameters and Guidelines.

<sup>14</sup> Exhibit M, Claimant's Late Comments on the Proposed Decision and Parameters and Guidelines.

<sup>15</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

<sup>16</sup> Exhibit O, Revised Draft Proposed Decision and Parameters and Guidelines.

<sup>17</sup> Exhibit P, Controller's Comments on the Revised Draft Proposed Decision and Parameters and Guidelines.

<sup>18</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

1. Stock (*employee time and cost of materials*) 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.) Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>19</sup>
2. Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.<sup>20</sup>

The claimant's proposed language does not address the claimant's request for reimbursement to develop policies and procedures referred to on page 1 of its comments.<sup>21</sup>

On June 19, 2019, the claimant filed rebuttal comments objecting to comments filed by Finance as untimely and not signed under penalty of perjury and to comments filed by the Controller as not signed under penalty of perjury.<sup>22</sup> The claimant requests that the comments be stricken from the record.<sup>23</sup> On June 26, 2019, the claimant filed rebuttal comments objecting to Finance's revised late comments as untimely and not signed under penalty of perjury and requesting that these comments be stricken from the record.<sup>24</sup>

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<sup>19</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>20</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>21</sup> In addition, the claimant's comments and rebuttal comments on the Draft Expedited Parameters and Guidelines do not request reimbursement for training, which was requested in the Test Claim. (Exhibit Q, Test Claim, pages 11-12.) The Commission's Test Claim Decision notes that "training" may be proposed for inclusion in the Parameters and Guidelines if it is supported by evidence in the record showing it is "reasonably necessary for the performance of the state-mandated program" in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5. (Exhibit A, Test Claim Decision, pages 15-16.)

<sup>22</sup> Exhibit G, Claimant's Rebuttal Comments, page 1.

<sup>23</sup> Exhibit G, Claimant's Rebuttal Comments, page 1.

<sup>24</sup> Exhibit I, Claimant's Rebuttal Comments. Finance's comments and revised comments were not filed within 21 days of service of the Draft Expedited Parameters and Guidelines as required and were, therefore, late. (Cal. Code Regs., tit. 2, 1183.9(b).) However, written comments received at least 15 days in advance of the meeting [i.e. late filings], shall be included in the Commission's meeting binders. (Cal. Code Regs., tit. 2, § 1181.10.) Several claimants have asserted, in a number of matters, that late comments should not be considered in Commission decisions as is permitted by the Commission's regulations (See Cal. Code Regs., tit. 2, §§ 1183.6(d), 1183.13(c), 1183.17(k), 1184.1(k), 1185.7(e), 1190.5(a)(3)(A)), but given that late filings, up to 15 days before the hearing, shall be included in the Commission's meeting binders, that the same testimony may be submitted at the hearing, and that this Draft Proposed Decision had not yet been issued at the time that the late comments were filed, staff is including these comments in the analysis to ease the decision making process for the Commission Members.

On August 1, 2019, the claimant filed comments on the Draft Proposed Decision Parameters and Guidelines, arguing that proposed activities to purchase and install dispensers for feminine hygiene products are supported by substantial evidence in the record, in the form of “legislative history acknowledging that the mandate would result in school districts incurring costs to purchase and install dispensers” and the claimant’s evidence supporting these costs; and asserting that “Commission staff has ignored the Commission members statements supporting the reimbursement of the dispenser costs at the Commission hearing when the test claim was approved.”<sup>25,26</sup> On September 18, 2019, the claimant filed late comments on the Proposed Decision and Parameters and Guidelines, reiterating the same arguments.<sup>27</sup>

On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, explaining why the feminine hygiene products dispensers purchased by the claimant were necessary to comply with the mandated activities.<sup>28</sup> The declaration also appears to reassert claimant’s request for the cost of training, which was originally requested by the claimant in the Test Claim and denied by the Commission in the Test

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Furthermore, contrary to the claimant’s assertion, Finance’s revised comments were signed under penalty of perjury. (See Exhibit H, page 3.) As to the Controller’s comments, they were not signed under penalty of perjury, as required, but also do not contain any substance other than the Controller’s agreement with the Draft Expedited Parameters and Guidelines. The claimant is correct, however, that if assertions of fact are made which are not supported by evidence in the record, they will not be considered. (Cal. Code Regs., tit. 2, §§ 1183.7, 1187.5.).

<sup>25</sup> The claimant appears to refer to the discussion that took place at the test claim hearing in response to the claimant’s request that the Commission approve the activity to purchase and install dispensers. The claimant was advised that this activity was not approved in the Test Claim Decision because it is not required by the plain language of the test claim statute; but that it could be proposed for inclusion in the Parameters and Guidelines as a reasonably necessary activity, to be considered in a separate proceeding. Commission member Stowers then commented that she would be looking forward to reading the Parameters and Guidelines and having “a reasonableness to include the dispensers.” Exhibit Q, CSM Public Hearing (May 24, 2019), transcript of proceedings, pages 18-21.

<sup>26</sup> Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

<sup>27</sup> Exhibit M, Claimant’s Late Comments on the Proposed Decision and Parameters and Guidelines.

<sup>28</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

Claim Decision.<sup>29</sup> The claimant did not file comments on the Revised Draft Proposed Decision and Parameters and Guidelines.<sup>30</sup>

### **B. State Controller's Office**

On June 14, 2019, the Controller filed comments on the Draft Expedited Parameters and Guidelines and recommends “no changes.”<sup>31</sup> The Controller did not comment on the Draft Proposed Decision and Parameters and Guidelines. On October 18, 2019, the Controller filed comments on the Revised Draft Proposed Decision and Parameters and Guidelines, recommending no changes.<sup>32</sup>

### **C. Department of Finance**

Finance filed late comments on the Draft Expedited Parameters and Guidelines expressing several concerns and proposing a change.<sup>33</sup>

First, Finance states that it “only supports the cost of the feminine hygiene products as reimbursable costs, based on the plain language of the test claim statute” and that “[a]ll other activities, such as the cost and installation of dispensers, training of personnel, and developing policies and procedures, must be supported by evidence showing that they are ‘reasonably necessary for the performance of the state-mandated program.’”<sup>34</sup> Finance reiterates its position that, based on the plain language of the test claim statute, the activities of training personnel and developing policies and procedures are not reasonably necessary to implement the mandate.<sup>35</sup> Finance further states that only actual costs for the state-mandated activity, that are traceable and supported by source documents that show the validity of the costs, are eligible for reimbursement.<sup>36</sup>

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<sup>29</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1 (stating that the new activities to implement the mandate by the claimant include (i) developing and implementation of internal policies, training, and procedures, and (ii) training personnel to administer the availability of feminine hygiene products in the school's restrooms).

<sup>30</sup> Exhibit O, Revised Draft Proposed Decision and Parameters and Guidelines.

<sup>31</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>32</sup> Exhibit P, Controller's Comments on the Revised Draft Proposed Decision and Parameters and Guidelines.

<sup>33</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>34</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>35</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>36</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

Finally, Finance continues to dispute the cost estimates submitted by the claimant with the Test Claim and notes the following additional concerns:

- As stated in the Senate Floor analysis, and emphasized in the Commission’s decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.
- The claimant purchased 115 dispensers for seven eligible schools and purchased an additional 12 in the second year of the mandate. To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states "50 percent of the school's restrooms" shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.<sup>37</sup>

Finance did not file comments either on the Draft Proposed Decision and Parameters and Guidelines or on the Revised Draft Proposed Decision and Parameters and Guidelines.

#### **D. Interested Person, Reynolds Consulting Group, Inc.**

In its comments on the Draft Expedited Parameters and Guidelines, the Reynolds Consulting Group, Inc., recommends that the Commission address the following issues in relation to the reimbursable activities:

- The use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward.
- The cost of the feminine hygiene dispensers as well as any repairs/replacements of dispensers from January 1, 2018, and forward.
- Stock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.<sup>38</sup>

No comments have been filed by the Reynolds Consulting Group, Inc., either on the Draft Proposed Decision and Parameters and Guidelines or on the Revised Draft Proposed Decision and Parameters and Guidelines.

### **IV. Discussion**

#### **A. Eligible Claimants (Section II. of Parameters and Guidelines)**

In the Test Claim Decision, the Commission found that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under

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<sup>37</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>38</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families.<sup>39</sup>

The test claim statute states:

A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets the 40-percent pupil poverty threshold required to operate a schoolwide program pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.<sup>40</sup>

The Commission found that the requirement that a school meet the “40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code” means that the school must meet two conditions:

- 1) The school is eligible for Title I, Part A funds by either servicing an eligible school attendance area<sup>41</sup> or be a participating Title I, Part A school,<sup>42</sup> *and*
- 2) Meet the second test identified in section 6314(a)(1)(A),<sup>43</sup> requiring that not less than 40 percent of the children enrolled in the school are from low-income families.<sup>44</sup>

Any school that meets only one of the above conditions is not required by the test claim statute to perform the mandated activities.

The term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole.<sup>45</sup> This means, for example, if a school district has 80 percent of children from low-income families, then the costs for a school in that district with 75 percent of children from low-income families would not be reimbursable because that percentage is not “at least as high as the percentage of children from low-income families served by the local educational agency as a whole,” and the school,

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<sup>39</sup> Exhibit A, Test Claim Decision, page 21.

<sup>40</sup> Education Code section 35292.6(a).

<sup>41</sup> The term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole. 20 United States Code, section 6313(a).

<sup>42</sup> See 20 United States Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(i).

<sup>43</sup> See also, 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(B).

<sup>44</sup> Exhibit A, Test Claim Decision, pages 14-15.

<sup>45</sup> 20 United States Code, section 6313(a).

therefore, does not meet the first condition described above. Conversely, in a district with 38 percent of children from low-income families, the costs for a school in that district with 39 percent of children from low-income families would not be reimbursable because, although it meets the first condition, it does not meet the second condition.

Accordingly, Section II. of the Parameters and Guidelines addressing the “Eligible Claimants,” states the following:

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district’s schools that meet the following criteria:

- Maintain any combination of classes from grade 6 to grade 12, inclusive; *and*
- Meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that:
  - 1) the school is eligible for Title I, Part A funds, by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

#### **B. Period of Reimbursement (Section III. of Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687, the test claim statute that imposes the mandate, became effective on January 1, 2018. Therefore, the period of reimbursement begins January 1, 2018.

#### **C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

The parties have filed comments addressing the scope of the reimbursable activities, and the claimant and the interested person comments request reimbursement for activities alleged to be reasonably necessary to comply with the mandate.

The comments are addressed below.

1. Requests limiting the restrooms required to be stocked with feminine hygiene products to “pupil” restrooms or to “girl’s” restrooms are inconsistent with the test claim statute and are, therefore, denied.

For the approved activity to stock 50 percent of school’s restrooms with feminine hygiene products, Finance requests that the activity be limited to “pupil” restrooms as follows:

As stated in the Senate Floor analysis, and emphasized in the Commission's decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.<sup>46</sup>

Interested person, Reynolds Consulting Group, Inc. also urges the Commission to consider that the reimbursable activity be stated to “[s]tock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.”<sup>47</sup>

These requests are not consistent with the test claim statute. The activity approved by the Commission tracks the statutory language in Education Code section 35292.6. The plain language of the test claim statute states that a public school required to comply with the mandate “shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.”<sup>48</sup> In addition, CDE’s K-12 Toilet Requirement Summary states that the California Plumbing Code does not require specific toilets for staff and students, and, although CDE recommends that separate toilets be provided for staff for safety and liability concerns, some schools may not have separate restrooms for pupils and staff.<sup>49</sup> Furthermore, schools may have single occupancy restrooms designated as all-gender toilet facilities. Thus, limiting the restrooms required to be stocked with feminine hygiene products to only “pupil” restrooms or to “girls” restrooms is not consistent with the plain language of the test claim statute.

Accordingly, these requests are denied.

2. In order to support the actual costs incurred for labor and materials, Section IV. A. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity, the number of restrooms in each of these schools, and each school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

For the approved activity to stock 50 percent of school’s restrooms with feminine hygiene products, the claimant proposes to add in Section IV. of the Parameters and Guidelines specific language that employee time and cost of materials is reimbursable (in bold and italic):

Stock (***employee time and cost of materials***) 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)  
Reimbursement is not required to stock more than 50 percent of the school’s

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<sup>46</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>47</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>48</sup> Education Code, section 35292.6(a).

<sup>49</sup> Exhibit Q, CDE, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on July 8, 2019).

restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>50</sup>

The “boilerplate” language in Section V. of the Parameters and Guidelines for direct cost reporting already authorizes reimbursement for the actual costs of employee time and materials for the approved reimbursable activity, as follows:

The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.<sup>51</sup>

Thus, the claimant’s proposal to add the same information in Section IV. of the Parameters and Guidelines is not necessary.

However, in comments on the Draft Expedited Parameters and Guidelines, Finance continues to dispute the claimant’s cost estimates for labor and materials and reiterates that “only actual costs—those incurred to implement the mandated activity— are eligible for mandated cost reimbursement,” and that these “costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.”<sup>52</sup> During the test claim proceedings, and again in comments on the Draft Expedited Parameters and Guidelines, Finance argued that “the Claimant has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school,”<sup>53</sup> and that “the required costs may be overstated in the test claim.”<sup>54</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable:

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<sup>50</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>51</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>52</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>53</sup> Exhibit Q, Finance’s Comments on the Draft Proposed Decision, page 1; Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>54</sup> Exhibit Q, Finance's Comments on the Test Claim, page 2.

To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states "50 percent of the school's restrooms" shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.<sup>55</sup>

Section IV. of the Parameters and Guidelines contains the following boilerplate language:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>56</sup>

The Commission agrees, however, that to support the actual labor and materials costs incurred as a result of this mandate, eligible claimants must identify the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school's total enrollment of female pupils in grades 6 to 12 in the claim year, in order to show the relationship between the reimbursable activity and the costs claimed. The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year. In addition, the identification of the schools in the reimbursement claim will make it easy to access information to determine whether those schools meet the two conditions of eligibility for this program.

Thus, Section IV. A. of the Parameters and Guidelines is revised to reflect this clarification as follows:

- A. Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school's total enrollment of female pupils in grades 6 to 12 in the claim year. The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on the total enrollment of female pupils in grades 6 to 12 in the claim year.

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<sup>55</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>56</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 5.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

3. The request by interested person, Reynold's Consulting Group, Inc., to allow a time study to support the labor costs claimed is denied because, although the Commission is authorized to adopt a reasonable reimbursement methodology (RRM), the Government Code does not authorize the Commission to approve the use of a time study for claiming actual costs.

Interested person, Reynolds Consulting Group, Inc., requests "[t]he use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward."<sup>57</sup>

Although the Controller has allowed time studies in limited circumstances under the Controller's audit authority,<sup>58</sup> the Government Code does not provide the Commission any authority to authorize reimbursement for actual costs based on a time study.

The Government Code only provides two methods of reimbursement: actual cost claiming, and claiming based on a proposed reasonable reimbursement methodology (RRM).<sup>59</sup> An RRM can be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.<sup>60</sup> The Commission, however, is not authorized to develop an RRM. Rather, an RRM may be developed by (1) Finance, (2) Controller, (3) an affected state agency, (4) a claimant, or (5) an interested party<sup>61</sup> and proposed to the Commission for inclusion in the Parameters and Guidelines.<sup>62</sup> The parties have not filed a request to adopt an RRM in this case.

Accordingly, the request is denied.

4. The activities to purchase and install a sufficient number of suitable dispensers, or repair or retrofit existing dispensers, for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms are supported by substantial evidence in the record, and are, therefore, reasonably necessary to comply with the mandate.

The Test Claim Decision approved the following reimbursable state-mandated activity for school districts with qualifying schools:

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<sup>57</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>58</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>59</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>60</sup> Government Code, section 17518.5.

<sup>61</sup> California Code of Regulations, title 2, section 1181.2(i) defines "Interested party" as a local agency, school district, or state agency, with a beneficial interest in the matter.

<sup>62</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

- Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

The claimant requests that the Commission approve the following additional activity, which is quoted below, as reasonably necessary to comply with the mandate:

*Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.*<sup>63</sup>

Interested person, Reynolds Consulting Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost “of the feminine hygiene dispensers as well as any repairs/replacements of dispensers . . . .”<sup>64</sup>

Finance opposes these requests, stating that installation of dispensers is not mandated by the plain language of the test claim statute and that the claimant’s request for the additional activities to purchase and install dispensers must be supported by evidence showing that they are reasonably necessary for the performance of the state-mandated program.<sup>65</sup> Finance further notes that the claimant only showed that it purchased 115 dispensers in the first year and an additional 12 in the second year of the mandate, but that it did not specify the number of restrooms at each eligible school, making it impossible to determine the number of dispensers reasonably necessary to comply with the mandate.<sup>66</sup>

Pursuant to Government Code section 17557(a) and section 1183.7 of the Commission’s regulations, the Parameters and Guidelines must identify the activities mandated by the state and “may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.” “Reasonably necessary activities” are defined in the Commission’s regulations as follows:

Reasonably necessary activities” are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by

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<sup>63</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

<sup>64</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>65</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>66</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>67</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity in order for the Commission’s approval of that activity to be correct as a matter of law.<sup>68</sup> “[I]nstance is insufficient to support a legal conclusion.”<sup>69</sup>

The claimant relies on the following documents to support the request for reimbursement to purchase and install dispensers. As part of the Test Claim filing, the claimant submitted a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, and invoices for the cost of the dispensers.<sup>70</sup> The declaration states that to implement provisions of the test claim statute in 2017-2018 fiscal year the claimant expended \$19,501.67 for the purchase and installation of 115 dispensers at the cost of \$156.74 per unit,<sup>71</sup> and that the claimant’s estimated 2018-2019 fiscal year costs include \$2,034.96 for the purchase and installation of 12 additional dispensers at \$169.58 per unit.<sup>72</sup> This did not show *why* the dispensers were necessary to comply with the mandate to stock 50 percent of the school’s restrooms with feminine hygiene products, but only that the claimant had incurred costs.

On September 20, 2019, the claimant filed another declaration of Jordan Aquino, explaining why the purchase and installation of dispensers is necessary to comply with the mandate.<sup>73</sup> The declaration states in relevant part the following:

[¶]

4. In deciding on the method to comply with the mandated activities to stock the feminine hygiene products at all times in the school's restrooms with feminine hygiene products an objective was that the feminine hygiene products be secured to avoid the waste I experienced with toilet paper and

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<sup>67</sup> California Code of Regulations, title 2, section 1183.7(d).

<sup>68</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5; Code of Civil Procedure section 1094.5(b), stating that “[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”

<sup>69</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1369 (concurring opinion).

<sup>70</sup> Exhibit Q, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018), and 25-27 (Invoices).

<sup>71</sup> Exhibit Q, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>72</sup> Exhibit Q, Test Claim, pages 20-23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>73</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

towels. The dispensers require the handle to be turned releasing the feminine hygiene products one at a time discouraging pupils from turning the handle multiple times and receiving an excessive quantity of the products. Additionally, the dispensers are secure and have been proven to be effective in safely storing the feminine hygiene products.

5. Additionally, the feminine hygiene products had to be readily available to avoid the need for female students to request from District staff the feminine hygiene products. A delivery method that involved tokens to access the feminine hygiene products was not an effective option.
6. After considering the options of self-storage plastic drawers and toilet tank storage baskets[,] installing dispensers in the school restrooms was the most reasonable, efficient and economic method for stocking and maintaining the feminine hygiene products in the school restrooms.<sup>74</sup>

Thus, based on the evidence in the record, the Commission finds that using appropriately configured dispensers is reasonably necessary for the performance of the state-mandated activity.

However, some schools may already be equipped with a sufficient number of suitable dispensers in their restrooms to comply with the mandate and, thus, would not need to incur increased costs to buy new dispensers. In addition, based on information publicly available, some schools may have existing dispensers, including coin dispensers, that can be repaired or modified to provide the feminine hygiene products at no cost to the pupils and at a fraction of the cost to purchase new dispensers.<sup>75</sup> Under these circumstances, it would only be necessary to repair or retrofit the dispensers to comply with the mandate, and would not be necessary to incur increased costs to buy all new dispensers.

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<sup>74</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

<sup>75</sup> California Code of Regulations, title 2, section 1187.5(c). For example, some colleges have successfully retrofitted existing dispensers in order to provide students with free feminine hygiene products. See e.g. Exhibit Q, Project Tampon Overview, Brown University UCS, page 6 (stating that since 2018 all dispensers in the school's women's and gender inclusive bathrooms have been converted to dispense at no cost to students), <http://www.brownucs.org/project-tampon> (accessed on September 25, 2019). In addition, some dispensers have a universal coin mechanism that allows switching between coin and free (no coin) operation and some dispensers may be retrofitted to operate in free (no-coin) release mode with the help of a conversion kit. See e.g., Exhibit Q, ASI 0468-2 Napkin/Tampon Vendor Description, <https://americanspecialties.com/product/dual-napkin-tampon-vendor-semi-recessed-25%C2%A2-50%C2%A2-or-free-operation-0468-2/> (accessed on September 23, 2019); Exhibit Q, Recessed Napkin / Tampon Vendor Description, Bobrick, page 2 (stating that part No. 3706-250 should be ordered for a free vend conversion kit to satisfy free menstrual product requirements in schools), [www.bobrick.com/products/washroom-accessories/restroom-accessories-catalog/sanitary-napkin-tampon-vendors/product/de-b-4706-25/](http://www.bobrick.com/products/washroom-accessories/restroom-accessories-catalog/sanitary-napkin-tampon-vendors/product/de-b-4706-25/) (accessed on September 20, 2019).

Thus, the proposed activity to purchase and install new dispensers is only reasonably necessary to comply with the mandate for a school that does not already have a sufficient number of suitable dispensers or cannot repair or retrofit a sufficient number of existing dispensers to stock 50 percent of the school's restrooms with feminine hygiene products at all times and at no cost to pupils. At the hearing, the Commission clarified that reimbursement for the activity to purchase and install new dispensers is reasonably necessary to the extent it is more cost effective than to repair or retrofit existing dispensers, and modified the proposed language of the Parameters and Guidelines as follows:

***Reimbursement to purchase and install new dispensers is required ~~only~~ to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate (as stated in Section IV. C. of these Parameters and Guidelines), whichever is more cost effective.***

The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times may be determined based on the total number of the school's restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

Accordingly, section IV. B. of the Parameters and Guidelines therefore provides as follows:

- B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms.

The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

***Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate (as stated in Section IV. C. of these Parameters and Guidelines), whichever is more cost effective.***

5. The proposed activity to develop policies and procedures is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

The claimant's Test Claim included a request for reimbursement to develop a school's policies and procedures, which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>76</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objects to the exclusion of costs for policies and procedures as follows:

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<sup>76</sup> Exhibit Q, Test Claim, pages 11, 21.

However, Commission Staff Draft Parameters & Guidelines has rejected the Test Claim requesting reimbursement of the new activities that included costs and labor related to the purchase and installation of dispensers *as well as school policies and procedures*.<sup>77</sup>

Finance opposes the inclusion of this activity in the Parameters and Guidelines, stating that based on the plain language of the test claim statute, developing policies and procedures is not reasonably necessary to implement the mandate.<sup>78</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity.<sup>79</sup>

The Commission denies the claimant's request for costs to develop policies and procedures because the claimant provides no evidence explaining why the proposed activity is reasonably necessary to comply with the mandate.

In the Test Claim, the claimant asserted that “[s]chool districts have incurred or will incur costs” for “[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products” to implement the alleged mandate.<sup>80</sup> In the rebuttal to Finance's comments on the Test Claim, the claimant further argued that the “Test Claim does not assert ‘a massive overhaul of school policies and procedures,’” that the costs “are very reasonable based on the time estimated to perform the tasks,” and that accordingly “claimant requests that the Test Claim activities be approved as a reimbursable mandate.”<sup>81</sup> To support these requests the claimant submitted a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District identifying the cost of developing policies and procedures.<sup>82</sup> The declaration, however, only states that to implement provisions of the test claim statute in the 2017-2018 fiscal year, the claimant expended \$347.16 on “[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products” and that “[t]hese costs represent labor costs for Maintenance & Operations Director, Purchasing Director and Purchasing Buyer”.<sup>83</sup> The declaration further states that the claimant's estimated 2018-2019 fiscal year costs

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<sup>77</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>78</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>79</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>80</sup> Exhibit Q, Test Claim, page 11.

<sup>81</sup> Exhibit Q, Claimant's Rebuttal Comments, pages 1-2.

<sup>82</sup> Exhibit Q, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>83</sup> Exhibit Q, Test Claim, page 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

for policies and procedures would amount to \$191.40, based on the previous year costs.<sup>84</sup> Thus, while the declaration provides evidence of costs, it does not provide any evidence that developing policies and procedures is reasonably necessary to comply with the mandate.

On September 20, 2019, the claimant filed another declaration of Jordan Aquino, reiterating that the “new activities performed, or to be performed” to implement the mandate include “[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products[.]”<sup>85</sup> Mr. Aquino’s declaration does not show *why* the activity to develop policies and procedures is reasonably necessary to comply with the mandate to stock 50 percent of the school’s restrooms with feminine hygiene products.

The Commission did not approve the development of policies and procedures as a mandated activity in the Test Claim Decision because the activity is not required by the plain language of the test claim statute. For this activity to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and sections 1183.7 and 1187.5 of the Commission’s regulations, the claimant must explain and support with substantial evidence in the record and in accordance with the Commission’s regulations, why developing policies and procedures is reasonably necessary to comply with the mandate. The record does not contain this evidence.

Accordingly, the Commission denies this request.

6. The activity to train personnel is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

The claimant’s Test Claim included a request for reimbursement to “train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district’s restrooms,” which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>86</sup> The claimant did not propose training as a reasonably necessary activity in response to the Draft Expedited Parameters and Guidelines, or Draft Proposed Decision and Proposed Parameters and Guidelines.

However, on September 20, 2019, the claimant filed a declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, which states in relevant part that the new activities performed, or to be performed by the claimant to implement the mandate include the following:

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<sup>84</sup> Exhibit Q, Test Claim, page 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>85</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

<sup>86</sup> Exhibit Q, Test Claim, pages 11-12, 13.

(ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools' restrooms[.]<sup>87</sup>

Finance generally opposed the inclusion of training in the Parameters and Guidelines, stating that based on the plain language of the test claim statute, training of personnel is not reasonably necessary to implement the mandate.<sup>88</sup>

The Commission denies the claimant's request for the costs to train personnel because the claimant provides no evidence explaining why the proposed activity is reasonably necessary to comply with the mandate, as is required by law.<sup>89</sup>

In the Test Claim, the claimant asserted that “[s]chool districts have incurred or will incur costs” to “[t]rain certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms” to implement the alleged mandate.<sup>90</sup> In its rebuttal to Finance's comments on the Test Claim, the claimant further stated that with respect to labor costs for the period from January 1, 2018, through June 30, 2018 “the costs for training certificated, classified and other personnel to administer the availability of feminine hygiene products in the district restrooms is estimated for principals to be at 34.5 hours, and custodians 49.5 hours for a total of \$2,110.51,” and that in 2018-2019 fiscal year, “the costs for training certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms totals \$2,132.48, and concluded that these labor costs are “very reasonable based on the time estimated to perform the tasks,” and that accordingly “claimant requests that the Test Claim activities be approved as a reimbursable mandate.”<sup>91</sup>

As part of the Test Claim filing, the claimant submitted a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District,<sup>92</sup> which states in relevant part that the “new activities performed, or to be performed” by the claimant to implement the mandate include activity to “[t]rain certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools' restrooms,” and identifies the cost of training at \$2,110.51 for 34 principals and 49 custodians at 0.5 hours each in 2017-2018 fiscal year,<sup>93</sup> and at \$2,132.48 for 34 principals and 49 custodians at 0.5 hours each in 2018-2019 fiscal

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<sup>87</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

<sup>88</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>89</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>90</sup> Exhibit Q, Test Claim, page 11.

<sup>91</sup> Exhibit Q, Claimant's Rebuttal Comments, pages 1-2.

<sup>92</sup> Exhibit Q, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>93</sup> Exhibit Q, Test Claim, pages 20-21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

year.<sup>94</sup> While this declaration provides evidence of costs, it does not provide any evidence explaining why training is reasonably necessary to comply with the mandate. Finally the declaration filed by the claimant on September 20, 2019 simply reiterates that the “new activities performed, or to be performed” to implement the mandate include activity to “[t]rain certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools' restrooms,” but provides no further information or explanation why training is necessary.<sup>95</sup>

The Commission did not approve training as a mandated activity in the Test Claim Decision because the activity is not required by the plain language of the test claim statute. For this activity to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and sections 1183.7 and 1187.5 of the Commission’s regulations, the claimant must explain and support with substantial evidence in the record and in accordance with the Commission’s regulations, why training of certificated, classified, and other personnel is reasonably necessary to comply with the mandate.

Accordingly, the Commission denies this request.

#### **D. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, fixed assets, and contracted services. However, travel and training costs were not included in the Draft Expedited Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activity or submit substantial evidence to support such a request.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

#### **V. Conclusion**

Based on the foregoing, the Commission hereby adopts the Revised Draft Proposed Decision and Parameters and Guidelines.

### **PARAMETERS AND GUIDELINES**

Education Code Section 35292.6, Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

Reimbursement for this program begins January 1, 2018.

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<sup>94</sup> Exhibit Q, Test Claim, page 23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>95</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

## **I. SUMMARY OF THE MANDATE**

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that meet specified criteria to stock 50 percent of such schools' restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

## **II. ELIGIBLE CLAIMANTS**

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district's schools that meet the following criteria:

- Maintain any combination of classes from grade 6 to grade 12, inclusive; *and*
- Meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

## **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687 became effective on January 1, 2018, establishing the period of reimbursement beginning January 1, 2018.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).

6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following ongoing activities ~~is~~ are reimbursable for the district's schools that meet the criteria described above:

- A. Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support the actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school's total enrollment of female pupils in grades 6 to 12 in the claim year.

The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

- B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms.<sup>96</sup>

The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

***Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.***

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be

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<sup>96</sup> Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, September 20, 2019.

claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

#### 4. Fixed Assets

Report the purchase price paid for fixed assets necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

#### B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

### **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>97</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

### **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

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<sup>97</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

## **VIII. STATE CONTROLLER’S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The decisions adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On November 26, 2019, I served the:

- **Decision and Parameters and Guidelines adopted November 22, 2019**

*Public School Restrooms: Feminine Hygiene Products, 18-TC-01*  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 26, 2019 at Sacramento, California.



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Jill L. Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/13/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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December 9, 2020

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Ms. Natalie Sidarous  
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Local Government Programs and  
Services Division  
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*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Statewide Cost Estimate**

*Public School Restrooms: Feminine Hygiene Products, 18-TC-01*  
Education Code Section 35292.6 as added by Statutes 2017, Chapter 687 (AB 10)

Dear Mr. Palkowitz and Ms. Sidarous:

On December 4, 2020, the Commission on State Mandates adopted the Statewide Cost Estimate on the above-entitled matter.

Sincerely,

Heather Halsey  
Executive Director

**STATEWIDE COST ESTIMATE**

**\$1,547,455- \$5,576,255<sup>1</sup>**

**(For the Initial Claiming Period of 2017-2018 and 2018-2019)**

**(Estimated Annual Costs for Fiscal Year 2019-2020 and Following Is**

**\$548,610 - \$2,169,774**

**Plus the Implicit Price Deflator)<sup>2</sup>**

Education Code Section 35292.6 as added by Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

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The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate on consent during a regularly scheduled hearing on December 4, 2020 as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Andre Rivera, Representative of the State Treasurer, Vice Chairperson	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller	Yes

**STAFF ANALYSIS**

**Background and Summary of the Mandate**

This Statewide Cost Estimate addresses the State’s liability for the subvention of costs for the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (test claim statute). The Commission found that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, for school districts with schools that: (1) maintain any

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<sup>1</sup> The high end of this range includes potential late and amended claims that may be filed until June 23, 2021, less a 10 percent late filing penalty.

<sup>2</sup> The high end of this range estimates the maximum cost if all school districts in California with schools required to comply with the mandate file reimbursement claims.

combination of classes from grade 6 through grade 12, inclusive; *and* (2) meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families, to stock 50 percent of the schools' restrooms with feminine hygiene products (defined as tampons and sanitary napkins) at all times at no cost to pupils.<sup>3</sup>

The Decision and Parameters and Guidelines for claiming costs incurred beginning January 1, 2018, were adopted on November 22, 2019.<sup>4</sup>

The State Controller's Office (Controller) issued claiming instructions on February 24, 2020.<sup>5</sup> Eligible claimants were required to file initial reimbursement claims with the Controller for costs incurred in fiscal year 2017-2018, beginning January 1, 2018, and in fiscal year 2018-2019, by June 23, 2020.<sup>6</sup> Late initial reimbursement claims may be filed until June 23, 2021, but will incur a 10 percent late filing penalty of the total amount of the initial claim without limitation.<sup>7</sup> Annual reimbursement claims for subsequent fiscal years, starting with fiscal year 2019-2020, must be filed with the Controller by February 15 following the fiscal year in which costs were incurred.<sup>8</sup> Annual claims filed more than one year after the deadline will not be accepted, and late claims filed within one year of the deadline will incur a 10 percent late filing penalty not to exceed \$10,000.<sup>9</sup>

During the test claim process, the claimant filed evidence to support its alleged increased costs of \$61,615.72 to comply with the mandate in fiscal year 2017-2018. This amount includes costs for developing and implementing policies and procedures, training, purchasing and installing dispensers, purchasing sanitary napkins and tampons, and labor to stock the products.<sup>10</sup> The claimant's estimated costs alleged for the 2018-2019 fiscal year, based on the 2017-2018 costs, amounted to \$43,988.22, including \$39,629.38 for stocking the restrooms with feminine hygiene products.<sup>11</sup>

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<sup>3</sup> Exhibit B, Test Claim Decision, adopted May 24, 2019, page 21.

<sup>4</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019.

<sup>5</sup> Exhibit D, Controller's Claiming Instructions 2020-02, Program No. 374, dated February 24, 2020, page 1.

<sup>6</sup> Exhibit D, Controller's Claiming Instructions 2020-02, Program No. 374, dated February 24, 2020, page 2.

<sup>7</sup> Government Code sections 17561(d)(3), 17568.

<sup>8</sup> Government Code section 17560(a).

<sup>9</sup> Government Code section 17568.

<sup>10</sup> Exhibit A, Test Claim, filed December 7, 2018, page 3.

<sup>11</sup> Exhibit A, Test Claim, filed December 7, 2018, page 3.

The claimant also estimates that the annual statewide cost to implement the alleged mandate is \$5,000,000.<sup>12</sup>

### **Eligible Claimants and Period of Reimbursement**

Any “school district” as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate, for the district’s schools that meet the following criteria:

- Maintain any combination of classes from grade six to grade 12, inclusive; *and*
- Meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687 became effective on January 1, 2018, establishing the period of reimbursement beginning January 1, 2018.<sup>13</sup>

### **Reimbursable Activities**

The Parameters and Guidelines authorize reimbursement for the following ongoing activities:

- A. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support the actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

***Reimbursement is not required to stock more than 50 percent of the school’s restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

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<sup>12</sup> Exhibit A, Test Claim, filed December 7, 2018, page 3.

<sup>13</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 23.

- B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms.

The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

***Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.***<sup>14</sup>

### **Offsetting Revenues and Reimbursements**

The Parameters and Guidelines contain the following boilerplate language:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.<sup>15</sup>

There are no known sources of offsetting revenues, and no offsetting revenues were identified in the initial reimbursement claims.

### **Statewide Cost Estimate**

Commission staff reviewed the 169 reimbursement claims (97 for 2017-2018 and 72 for 2018-2019) submitted by 115 school districts<sup>16</sup> for 1,140 schools and data compiled by the Controller.<sup>17</sup> The unaudited reimbursement claims request reimbursement for a total \$922,121 for fiscal year 2017-2018, beginning January 1, 2018, and \$625,334 for fiscal year 2018-2019, totaling \$1,547,455 for the initial reimbursement period, with the total cost segregated by activity

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<sup>14</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, pages 24-25.

<sup>15</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 26.

<sup>16</sup> Of the 115 school districts that filed claims during the initial claim period, 54 districts filed claims for both fiscal years, 43 districts filed claims for just fiscal year 2017-2018, and 18 districts filed claims for just 2018-2019. (Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 1-2.)

<sup>17</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 1-2; Exhibit G, Excerpt, List of Schools from 2017-2018 Reimbursement Claims; Exhibit G, Excerpt, List of Schools from 2018-2019 Reimbursement Claims. Some claims listed the "District Office" under the list of schools required to comply with the mandate. The total number of schools (1,140) does not include the "District Offices" because the mandate applies only to those schools that meet the criteria in Education Code section 35292.6.

as follows:

\$664,260 <sup>18</sup>	Activity A. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.
\$827,260	Activity B. Purchase and install, or retrofit or repair, a sufficient number of suitable dispensers for feminine hygiene products in 50 percent of the school’s restrooms. <sup>19</sup>
\$56,750	Indirect Costs
\$0	Offsetting Revenues or Other Reimbursements <sup>20</sup>
(\$815)	Less 10 Percent Late Filing Penalty
<b>\$1,547,455</b>	<b>Total Costs Claimed<sup>21</sup></b>

*Initial Reimbursement Period, Fiscal Years 2017-2018, 2018-2019*

The statewide cost for the initial reimbursement period is estimated to range from \$1,547,455, the total amount of unaudited filed reimbursement claims, to \$5,576,255, the total estimated cost for school districts with schools subject to the mandate for fiscal years 2017-2018 and 2018-2019, less a 10 percent late filing penalty, based on the assumptions outlined in the analysis, with

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<sup>18</sup> The Controller’s Summary of Claims, for 2018-2019, shows total costs claimed for Activity A. of \$448,567. However, this amount does not include the costs claimed for Activity A. by Merced City School District of \$7,704. (The Controller’s Summary of Claims identifies this District as “Merced Elementary School District, but the District’s correct name, as identified on the reimbursement claims filed, is Merced City School District.) Instead, the Controller’s summary mistakenly identifies the total amount of feminine hygiene products purchased by Merced at 7,704 products. (Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 10.) However, the reimbursement claim filed by Merced City School District claims costs of \$7,704 for Activity A., and did not identify the amount of product purchased. (Exhibit G, Excerpt from Merced City School District’s 2018-2019 Reimbursement Claim.) Thus, the total amount claimed for Activity A. for fiscal year 2018-2019 should total \$456,271, instead of \$448,567 (a \$7,704 difference), as indicated on page 12 of Exhibit E. The correct amount claimed for 2018-2019 of \$456,271, plus the costs claimed for Activity A. for 2017-2018 of \$207,989, totals \$664,260.

<sup>19</sup> This amount represents costs actually claimed for Activity B.1. (purchase and install dispensers) of \$826,309 and for Activity B.2. (retrofit and repair dispensers) of \$951, for a total of \$827,260.

<sup>20</sup> There are no known or reported offsetting revenues at this time.

<sup>21</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 6-8, 10, 12, indicate that a desk review is in progress for the reimbursement claims submitted by Merced City School District, Santa Ana Unified School District, Guadalupe Union Elementary School District, and Yosemite Unified School District; that the summary reduces an amount claimed by Jurupa Unified School District; and that the claims data for Merced City School District was incomplete and that a revised claim would be filed.

costs segregated by activity as follows:

\$664,260 - \$2,610,841	Activity A. Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. <sup>22</sup>
\$827,260 - \$3,182,154	Activity B. Purchase and install (or retrofit and repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms. <sup>23</sup>
\$56,750 - \$231,720	Indirect Costs <sup>24</sup>
\$0	Offsetting Revenues <sup>25</sup>
(\$815 - \$448,460)	Less 10 Percent Late Filing Penalty <sup>26</sup>
<b>\$1,547,455 - \$5,576,255</b>	<b>Total Estimated Costs</b>

*Fiscal Year 2019-2020 and Following*

Future statewide annual costs beginning fiscal year 2019-2020 are estimated to range from \$548,610 - \$2,169,774, plus the implicit price deflator, based on the assumptions outlined in the analysis, with the range of costs segregated by activity as follows:

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<sup>22</sup> The low end of the range represents costs actually claimed for Activity A. of \$664,260. The high end of the range represents all potential costs that could be claimed for Activity A. including in late or amended claims filed by school districts with schools required to comply with the mandate, for a total of \$2,610,841.

<sup>23</sup> The low end of the range represents costs actually claimed for Activity B.1. (purchase and install dispensers) of \$826,309 and for Activity B.2. (retrofit and repair dispensers) of \$951, for a total of \$827,260. The high end of the range represents all potential costs that could be claimed for Activity B. including in late or amended claims filed by school districts with schools required to comply with the mandate, for a total of \$3,182,154.

<sup>24</sup> The low end of the range represents the indirect costs actually claimed. The high end of the range is the average of the indirect cost rates claimed in the unaudited initial claims multiplied by the estimated direct costs.

<sup>25</sup> The high end of the projected potential costs for the initial reimbursement period makes no assumptions regarding offsetting revenues or reimbursements. There are no known or reported offsetting revenues at this time.

<sup>26</sup> The low end of the range represents penalties already recognized by the Controller's Office. The high end includes the penalty based on the estimated costs that may still be claimed in late or amended claims for the initial claiming period (\$6,024,715 in total estimated statewide direct and indirect costs that may yet be claimed - \$1,548,270 in costs actually claimed to date = \$4,476,445 x 10% = \$447,645 + (\$815 penalties imposed on costs actually claimed) = \$448,460).

\$444,784 - \$1,746,260	Activity A. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.
\$82,726 - \$340,061	Activity B. Purchase and install (or retrofit and repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school’s restrooms.
\$21,100 - \$83,453	Indirect Costs
(\$0)	Offsetting Revenues <sup>27</sup>
<b>\$548,610 - \$2,169,774</b>	<b>Total Estimated Future Costs</b>

**Assumptions**

Based on the claims data and other publicly available information, staff made the following assumptions and used the following methodology to develop the Statewide Cost Estimate for this program.

- *The total amount claimed for the initial reimbursement period may increase as a result of late or amended initial claims.*

There are 1,037 school districts and 10,588 schools in the State of California<sup>28</sup> and, as explained below, there are approximately 5,653 schools in fiscal year 2017-2018; 5,630 schools in fiscal year 2018-2019; and 5,579 schools in 2019-2020 that are mandated to comply with this program because these schools:

- Maintain any combination of classes from grade 6 to grade 12, inclusive; *and*
- Meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)<sup>29</sup>

Only 115 school districts filed reimbursement claims (97 filed for 2017-2018 and 72 filed for 2018-2019) with the Controller during the initial reimbursement period, and have identified costs incurred by a total of 1,140 schools within their districts. However, 1,140 schools is just 20 percent of the schools in the State required to comply with the mandated program. Accordingly, several more late claims may be filed. If all eligible school districts file late or amended initial

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<sup>27</sup> No assumptions are made on offsetting revenues. There are no known or reported offsetting revenues at this time.

<sup>28</sup> Exhibit G, California Department of Education, Fingertip Facts on Education in California – *CalEdFacts*, <https://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp> (accessed on June 30, 2020).

<sup>29</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 23.

claims, the amount claimed will exceed the lower end of the Statewide Cost Estimate. Late claims for the initial period of reimbursement may be filed until June 23, 2021, but will be reduced by a 10 percent late filing penalty without limitation.<sup>30</sup>

There may be several reasons why eligible school districts did not file reimbursement claims by the June 23, 2020 deadline, including but not limited to the following: (1) disruptions due to the COVID-19 pandemic prevented the district from preparing and filing a reimbursement claim by the deadline; (2) the district did not incur costs exceeding the \$1,000 minimum threshold; or (3) the district had a relatively low number of schools that meet both the Title I, Part A requirement *and* the requirement that at least 40 percent of the pupils enrolled in the school are from low-income families or relatively low costs and, thus, the district determined that it was not cost-effective to participate in the reimbursement claim process.

It is likely that there will be an unusually high number of late initial claims for this program due to the challenges in filing timely reimbursement claims during the COVID-19 pandemic, with many employees taking sick and family leave and most who are primarily teleworking without regular access to any paper documentation that may have been maintained for claiming purposes and with other, higher priority, duties to attend to.

Thus, the total amount claimed for the initial reimbursement period may increase as a result of late or amended initial claims.

- *The future annual costs for this program may increase or decrease based on the number of schools within a school district that are Title I, Part A eligible and meet the 40 percent pupil poverty threshold mandating them to comply with the reimbursable activities, the number of enrolled females, and the increase or decrease in the cost of materials and employee salaries.*

There are several factors that drive the future annual costs of this program, and dependent upon their correlation, the program costs may increase or decrease. If more students in the future become eligible for free or reduced priced meals under federal law, or are otherwise determined to meet the pupil poverty threshold, then more schools may have to comply with the mandate, resulting in increased statewide costs. As a measure of pupil poverty, schools can participate in Community Eligibility Provision (CEP) if their Identified Student Percentage (ISP) for the school, group of schools, or district is at least 40 percent.<sup>31</sup> Eligibility to participate in the CEP is based on the percentage of students receiving benefits from the Supplemental Nutrition Assistance Program (formerly food stamps) or other specific means-tested programs, which is known as the ISP. Based on its streamlined application process and goal to increase access to school meals for children in low-income areas while reducing the burden associated with collecting household applications, the CEP allows these schools to offer free meals to *all*

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<sup>30</sup> Government Code sections 17561(d)(3), 17568.

<sup>31</sup> Exhibit G, *Characteristics of School Districts Offering Free School Meals to All Students Through the Community Eligibility Provision of the National School Lunch Program*, by Stephanie Rogus, Joanne Guthrie, Katherine Ralston, <https://www.ers.usda.gov/webdocs/publications/89948/err255-summary.pdf?v=1215.1> (accessed on August 17, 2020).

students,<sup>32</sup> thereby potentially increasing the likelihood that more schools may be required to comply with the mandated program.<sup>33</sup>

Future program costs also depend on the increase or decrease in female pupil enrollment in grades six through 12. According to the Department of Finance (Finance), K-12 enrollment is projected to decline by 2028-2029 as follows:

State enrollment has experienced the fifth consecutive decrease in total public K-12 enrollment in the 2018-2019 school year (-25,000 students), enrolling 6,185,200. . . Over the next ten years, if current trends in fertility and migration hold, a further decline of 425,700 in total enrollment is projected, resulting in total enrollment of 5,759,500 by 2028-29.<sup>34</sup>

The Public Policy Institute of California cites to Finance which projects an enrollment decline in K-12 of seven percent between 2020-2021 and 2027-2028.<sup>35</sup> For purposes of this analysis, it is assumed that the projected enrollment decline is spread evenly across grades. Thus, a one percent yearly decline is assumed in each future year beginning fiscal year 2020-2021.

In addition, as a result of COVID-19, there were school closures during the spring of the 2019-2020 school year and through at least the fall of the 2020-2021 school year for most districts, which will likely result in a temporary reduction of costs claimed, particularly for the 2020-2021 school year. These particular temporary savings are not included in the cost estimate, but should be noted as an explanation for the likely reason that the 2020-2021 claims may be lower than even the low end of the estimate.

Statewide costs may increase if the cost of materials and supplies and labor increases. For

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<sup>32</sup> Exhibit G, *Characteristics of School Districts Offering Free School Meals to All Students Through the Community Eligibility Provision of the National School Lunch Program*, by Stephanie Rogus, Joanne Guthrie, Katherine Ralston, <https://www.ers.usda.gov/webdocs/publications/89948/err255-summary.pdf?v=1215.1> (accessed on August 17, 2020).

<sup>33</sup> Exhibit G, *Characteristics of School Districts Offering Free School Meals to All Students Through the Community Eligibility Provision of the National School Lunch Program*, by Stephanie Rogus, Joanne Guthrie, Katherine Ralston, <https://www.ers.usda.gov/webdocs/publications/89948/err255-summary.pdf?v=1215.1> (accessed on August 17, 2020).

<sup>34</sup> Exhibit G, *California Public K-12 Graded Enrollment and High School Graduate Projections by County — 2019 Series*, Department of Finance, [http://www.dof.ca.gov/Forecasting/Demographics/Projections/Public\\_K-12\\_Graded\\_Enrollment/](http://www.dof.ca.gov/Forecasting/Demographics/Projections/Public_K-12_Graded_Enrollment/) (accessed on June 30, 2020).

<sup>35</sup> Exhibit G, *Declining Enrollment in California Schools: Fiscal Challenges and Opportunities in the Coming Decade*,” Public Policy Institute of California, February 2020 (Citing to the Department of Finance), <https://www.ppic.org/wp-content/uploads/declining-enrollment-in-california-schools-fiscal-challenges-and-opportunities-in-the-coming-decade.pdf> (accessed on October 1, 2020), page 7.

example, a Google search for the cost of dispensers shows a wide variation in costs, depending on the size and brand purchased. Costs can range from what the test claimant paid (\$157 to \$170 per unit), to as high as \$508 (for the EVOGEN Sanitary Napkin/Tampon Dispenser).<sup>36</sup> The assumption is that the newer, advanced dispensers that have a modern, streamlined design, provide an Americans with Disabilities Act compliant push button dispenser, and have a front adjustable tampon channel to accommodate future product opportunities, are more expensive and will increase program costs. Moreover, employee salaries may increase or decrease in the future, thereby increasing or decreasing labor costs to comply with the mandate.

Therefore, the assumption is that future annual costs for this program may increase or decrease based on the number of schools within a school district that are Title 1, Part A eligible and meet the 40 percent pupil poverty threshold mandating them to implement the reimbursable activities, the number of enrolled females in grades six through 12, and the increase or decrease in the cost of materials and supplies and labor.

- *The total amount for this program may be lower than the Statewide Cost Estimate based on the Controller's audit findings.*

Pursuant to Government Code section 17561, the Controller may conduct audits and reduce any claim it deems to be excessive or unreasonable. Therefore, costs may be lower than the Statewide Cost Estimate based on the Controller's audit findings.

- *The future annual costs for this program may be lower than the Statewide Cost Estimate if this program is added to the K-12 Mandate Block Grant and school districts voluntarily participate in the Block Grant.*

If this mandated program is added to the K-12 Mandate Block Grant *and* a school district voluntarily participates in the block grant program, then costs cannot be claimed through the State's reimbursement process.<sup>37</sup> A school district that receives block grant funding is not eligible to submit claims to the Controller for reimbursement pursuant to Government Code section 17560 for any costs of any state mandates included in the statutes and executive orders identified in Government Code section 17581.6(c)(3).<sup>38</sup> The block grant allows school districts to receive a per pupil allocation to carry out reimbursable mandated activities. As a result, the future annual costs of this program may be lower than the Statewide Cost Estimate.

- *The estimated number of schools, statewide, required to comply with the mandate is 5,653 for fiscal year 2017-2018; 5,630 for fiscal year 2018-2019; and 5,579 for fiscal year 2019-2020.*

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<sup>36</sup> Exhibit A, Test Claim, filed December 7, 2018, pages 21, 23 (Declaration of Jordan Aquino, Chief Business Officer, Desert Sands USD), and 26 (purchase order for the 2017-2018 purchase of dispensers); Exhibit G, Google search for feminine hygiene dispensers, [https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF\\_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKEwj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAgMECs&biw=1920&bih=969](https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKEwj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAgMECs&biw=1920&bih=969) (accessed on July 1, 2020).

<sup>37</sup> Government Code section 17581.6(b).

<sup>38</sup> Government Code section 17581.6(c)(3).

The actual number of schools, statewide, that maintain any combination of classes from grade six to grade 12, inclusive, which meet both threshold requirements mandating them to implement the reimbursable activities (the school is eligible for Title I, Part A funds and at least 40 percent of the children enrolled in the school are from low-income families) is unknown.

The legislative history for the test claim statute estimated that 3,093 schools are required to comply with the mandated program.<sup>39</sup> However, the analysis does not explain how that number was estimated.

California Department of Education (CDE) publishes a list of all K-12 schools in California receiving Title 1, Part A funds, which shows that a total of 6,949 K-12 schools received Title 1, Part A funds in 2017-2018<sup>40</sup> and 7,068 K-12 schools received these funds in 2018-2019.<sup>41</sup> These numbers, however, do not identify which of these schools also have at least 40 percent of the children enrolled from low-income families or what grade levels the schools maintain. The mandate applies to all schools that maintain grades six to 12 and, therefore, the mandated program applies to elementary schools that go up to grade six, middle schools, and high schools.

Thus, a better measure can be taken from CDE's Student Poverty Free and Reduced Price Meals (FRPM) reports.<sup>42</sup> These reports contain the data pertaining to students who are eligible for Free or Reduced Price Meals, which is certified by local educational agencies as part of the California Longitudinal Pupil Achievement Data System (CALPADS) Fall 1 data submission.<sup>43</sup> Under federal law, local educational agencies can use several measures of poverty to determine a school's eligibility for Title 1, Part A funds, one of which is the number of students enrolled and eligible for the free or reduced price lunch program.<sup>44</sup> CDE's Student Poverty FRPM reports provide unduplicated data for fiscal years 2017-2018, 2018-2019, and 2019-2020, by school, with the grade levels identified, and the percentage of students enrolled on Census Day (the first Wednesday in October) eligible to receive free or reduced price meals under federal law, which were filtered to exclude non-public, nonsectarian schools; preschool, kindergarten, and adult schools; schools that do not maintain grade levels six to 12, inclusive; and schools in which less than 40 percent of the students are eligible for free or reduced price meals.<sup>45</sup> The data was then

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<sup>39</sup> Exhibit G, Senate Committee on Education, Analysis of AB 10 (2017-2018), June 28, 2017, page 3.

<sup>40</sup> Exhibit G, California Department of Education, Title 1, Part A School Allocations, Fiscal Year 2017-2018 (XLSX), <https://www.cde.ca.gov/sp/sw/t1/schoolallocations.asp> (accessed on June 30, 2020).

<sup>41</sup> Exhibit G, California Department of Education, Title 1, Part A School Allocations, Fiscal Year 2018-2019 (XLSX), <https://www.cde.ca.gov/sp/sw/t1/schoolallocations.asp> (accessed on June 30, 2020).

<sup>42</sup> Exhibit G, California Department of Education, Student Poverty – Free or Reduced Price Meals Data, <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>43</sup> Exhibit G, California Department of Education, Student Poverty – Free or Reduced Price Meals Data, <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>44</sup> 20 United States Code section 6313(a)(5)(A).

<sup>45</sup> Exhibit G, California Department of Education, 2017-18 (Filtered) Unduplicated Student

totaled and shows that 5,653 schools in fiscal year 2017-2018; 5,630 schools in fiscal year 2018-2019; and 5,579 schools in fiscal year 2019-2020 maintained grades six to 12 and had at least 40 percent of the children enrolled eligible for free or reduced price meals.<sup>46</sup>

Therefore, based on CDE's Student Poverty FRPM reports, the estimated number of schools statewide that are required to comply with the mandated program, and may still file late or amended claims for the initial reimbursement period and a claim for 2019-2020, is estimated to be 5,653 for fiscal year 2017-2018; 5,630 for fiscal year 2018-2019; and 5,579 for fiscal year 2019-2020.

- *The estimated number of female pupils enrolled in grades six to 12 in the schools mandated to comply with the program is assumed to be 938,276 for fiscal year 2017-2018; 924,742 for fiscal year 2018-2019; and 919,084 for 2019-2020.*

The annual cost of this program has a direct correlation with the number of female pupils in grades six through 12, who are enrolled in the schools required to comply with the mandated program. The actual number of female pupils in the schools required to comply with the mandated program is unknown.

However, CDE's Student Poverty FRPM reports identify total enrollment in those schools that have students eligible for the FRPM program, and when filtered to exclude non-public, nonsectarian schools; adult schools; schools that do not offer grades six to 12; and schools that have less than 40 percent of the students eligible for free and reduced price meals, the *total enrollment* in the schools required to comply with the mandated program is as follows:

In fiscal year 2017-2018, total enrollment in the schools required to comply with the mandate is 3,475,098.<sup>47</sup>

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Poverty – Free or Reduced Price Meals Data (XLSX; 2MB; Revised 25-May-2018), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020); Exhibit G, California Department of Education, 2018-19 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XSLX; 2MB Posted 28-Mar-2019), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020); Exhibit G, California Department of Education, 2019-20 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XSLX; 2MB; Posted 13-Apr-2020), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>46</sup> Exhibit G, California Department of Education, 2017-18 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XLSX; 2MB; Revised 25-May-2018), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020); Exhibit G, California Department of Education, 2018-19 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XSLX; 2MB Posted 28-Mar-2019), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020); Exhibit G, California Department of Education, 2019-20 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XSLX; 2MB; Posted 13-Apr-2020), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>47</sup> Exhibit G, California Department of Education, 2017-2018 (Filtered) Unduplicated Student Poverty - Free and Reduced Price Meals Data (XLSX; 2MB; Revised 25-May-2018),

In fiscal year 2018-2019, total enrollment in the schools required to comply with the mandate is 3,424,969.<sup>48</sup>

In fiscal year 2019-2020, total enrollment in the schools required to comply with the mandate is 3,404,015.<sup>49</sup>

These reports, however, do not identify enrollment by grade level or by the number of *female* students in grades six to 12 in schools required to comply with the mandate.

Thus, to determine the estimated number of female pupils in grades six to 12 in the schools mandated to comply with the program, we calculate the percentage of total statewide enrollment comprised of female pupils in grades six to 12 in fiscal years 2017-2018, 2018-2019, and 2019-2020, and then multiply that percentage by the total enrollment in the schools required to comply with the mandate as follows:

Fiscal Year	Total Statewide Enrollment	Statewide Female Enrollment in Grades 6 to 12	Percentage of Total Statewide Enrollment Comprised of Females in Grades 6-12	Total Enrollment in Schools Required to Comply with the Mandate	Estimated Number of Female Pupils in Grades 6 to 12 in Schools Required to Comply with the Mandate (i.e. 27% of total enrollment)
2017-2018	6,220,413 <sup>50</sup>	1,650,276 <sup>51</sup>	27%	3,475,098	938,276

<https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>48</sup> Exhibit G, California Department of Education, 2018-2019 (Filtered) Unduplicated Student Poverty - Free and Reduced Price Meals Data (XSLX; 2MB; Posted 28-Mar-2019), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>49</sup> Exhibit G, California Department of Education, 2019-2020 (Filtered) Unduplicated Student Poverty - Free and Reduced Price Meals Data (XSLX; 2MB; Posted 13-Apr-2020) <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>50</sup> Exhibit G, California Department of Education, DataQuest, 2017-2018 Statewide Enrollment by Grade (with county data), <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdLevels.aspx?cds=00&aggllevel=state&year=2017-18> (accessed on July 2, 2020).

<sup>51</sup> Exhibit G, California Department of Education, DataQuest, Female Statewide Enrollment Multi-Year Summary by Grade, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdYears.aspx?cds=00&aggllevel=state&year=2019-20> (accessed on July 2, 2020).

Fiscal Year	Total Statewide Enrollment	Statewide Female Enrollment in Grades 6 to 12	Percentage of Total Statewide Enrollment Comprised of Females in Grades 6-12	Total Enrollment in Schools Required to Comply with the Mandate	Estimated Number of Female Pupils in Grades 6 to 12 in Schools Required to Comply with the Mandate (i.e. 27% of total enrollment)
2018-2019	6,186,278 <sup>52</sup>	1,647,704 <sup>53</sup>	27%	3,424,969	924,742
2019-2020	6,163,001 <sup>54</sup>	1,646,066 <sup>55</sup>	27%	3,404,015	919,084

Thus, the estimated number of female pupils in grades 6 through 12 in the schools mandated to comply with the program is assumed to be 938,276 for fiscal year 2017-2018; 924,742 for fiscal year 2018-2019; and 919,084 for 2019-2020, and these estimates are used throughout this Statewide Cost Estimate.

- *The estimated cost of feminine hygiene products could increase if each pupil enrolled in grades six to 12 uses three products per day for five days a week for each month of the school year, or 138 products per pupil per year, assuming each product costs \$.11 per pupil.*

The actual number of products needed per year and the annual cost of tampons and sanitary napkins per pupil is unknown. However, based on the following information, it is estimated that each female pupil in grades six through 12 could use 138 products per school year.

Education Code section 46100 provides that the “governing board of each school district shall, subject to the provisions of this chapter, fix the length of the school day for the several grades

<sup>52</sup> Exhibit G, California Department of Education, DataQuest, 2018-2019 Statewide Enrollment by Grade (with county data), <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdLevels.aspx?cds=00&aggllevel=state&year=2018-19> (accessed on July 2, 2020).

<sup>53</sup> Exhibit G, California Department of Education, DataQuest, Female Statewide Enrollment Multi-Year Summary by Grade, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdYears.aspx?cds=00&aggllevel=state&year=2019-20> (accessed on July 2, 2020).

<sup>54</sup> Exhibit G, California Department of Education, DataQuest, 2019-2020 Statewide Enrollment by Grade (with county data), <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdLevels.aspx?cds=00&aggllevel=state&year=2019-20> (accessed on July 2, 2020).

<sup>55</sup> Exhibit G, California Department of Education, DataQuest, Female Statewide Enrollment Multi-Year Summary by Grade, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdYears.aspx?cds=00&aggllevel=state&year=2019-20> (accessed on July 2, 2020).

and classes of the schools maintained by the district.” However, as a condition of apportionment, each school shall offer 180 school days per year and is required to maintain the following minimum number of instructional minutes in a school year: 54,000 minutes for grades four to eight, and 64,800 minutes for grades nine through 12.<sup>56</sup> However, recess, lunch, and other breaks are not included as instructional time and are assumed to account for an average of an additional hour per day. With these numbers, it is estimated that the average school day for grades six through eight is six hours<sup>57</sup> and the average school day for grades nine through 12 is seven hours.<sup>58</sup> However, with after-school activities, especially in middle school and high school, the hours when pupils are on campus and the restrooms remain open may be longer than six or seven hours per day.

According to the Food and Drug Administration (FDA) and Planned Parenthood, tampons should be changed every four to eight hours, or as often as needed to prevent toxic shock syndrome.<sup>59</sup> Sanitary pads should be changed at least every three or four hours.<sup>60</sup> Therefore, assuming a six to seven hour school day, it is estimated that a sufficient amount of product used by female students in grades six through 12 could be three products for each day for five days each month during a school year.<sup>61</sup>

Generally, California schools have set their academic calendars to begin sometime in August and conclude sometime in June. Thus, it is estimated that each female pupil in grades six through 12 could need approximately 138 products per full school year in fiscal years 2018-2019 and 2019-2020 (three products per day for five days equal 15 products per month, multiplied by 9.2 months, totals 138), and half that amount, or 69 products per pupil is estimated, for fiscal year 2017-2018, since the program was effective beginning January 1, 2018.

The total cost of feminine hygiene products can vary depending on the vendor and the product

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<sup>56</sup> Education Code section 46200 et seq., 46207.

<sup>57</sup> 54,000 minutes divided by 60 minutes equals 900 hours per year; 180 minimum days per year divided by 900 hours per year equals five hours per day for grades six through eight.

<sup>58</sup> 64,800 minutes divided by 60 minutes equals 1080 hours per year; 1,080 hours divided by 180 minimum days per year equals six hours per day, plus one hour for lunch, recess and other breaks equal seven hours per day for grades nine through 12.

<sup>59</sup> Exhibit G, *The Facts on Tampons – and How to Use Them Safely*, Federal Food and Drug Administration, <https://www.fda.gov/consumers/consumer-updates/facts-tampons-and-how-use-them-safely> (accessed on June 29, 2020); *How do I use tampons, pads, period underwear, and menstrual cups?*, Planned Parenthood, <https://www.plannedparenthood.org/learn/health-and-wellness/menstruation/how-do-i-use-tampons-pads-and-menstrual-cups> (accessed on July 1, 2020).

<sup>60</sup> Exhibit G, *Kids Health, Pads and Tampons*, Nemours, <https://kidshealth.org/en/kids/pads-tampons.html#:~:text=You%20might%20wonder%20how%20often,may%20get%20saturated%20more%20quickly> (accessed on June 29, 2020).

<sup>61</sup> Exhibit G, *Kids Health, All About Periods*, Nemours, “Periods usually last about 5 days. But a period can be shorter or last longer.” <https://kidshealth.org/en/teens/menstruation.html> (accessed on June 30, 2020).

purchased. However, the purchase orders provided in the Test Claim show that sanitary pads were purchased in a box of 250 pads at \$24.62 per box, which makes each pad roughly \$0.10 per pad; tampons were purchased in a box of 500 at \$52.50 per box, which makes each tampon roughly \$0.11 per tampon.<sup>62</sup> Two of the reimbursement claims filed with the Controller's Office include invoices that are consistent with these estimates. For example, ABC Unified School District attached an invoice to its fiscal year 2017-2018 reimbursement claim showing a purchase of 1,000 tampons at \$103, or \$.10 per tampon.<sup>63</sup> An invoice attached to the claim filed by Anaheim Union High School District shows the purchase of 250 sanitary pads at \$27.51, or \$.11 per pad.<sup>64</sup>

At \$0.11 per product, the cost of tampons and sanitary napkins for each pupil in fiscal year 2017-2018 can reach \$7.59 (if each pupil uses an estimated 69 products from January 1, 2018, to June 30, 2018 multiplied by \$0.11 equal \$7.59), and \$15.18 per pupil for a full fiscal year beginning in fiscal year 2018-2019 (if each pupil uses an estimated 138 products per year multiplied by \$0.11 equals \$15.18). This amount does not account for the labor costs to purchase and stock the product.

Thus, if all female pupils in grades six to 12 in the schools required to comply with the mandate use 69 products in fiscal year 2017-2018, and use 138 products in a full fiscal year beginning 2018-2019, total statewide costs of the feminine hygiene products could increase as follows:

FY 2017-2018 - \$7.59 x 938,276 estimated statewide enrollment of female pupils in grades six to 12 in schools required to comply with the mandate = \$7,121,515

FY 2018-2019 - \$15.18 x 924,742 estimated statewide enrollment of female pupils in grades six to 12 in schools required to comply with the mandate = \$14,037,584

FY 2019-2020 - \$15.18 x 919,084 estimated statewide enrollment of female pupils in grades six to 12 in schools required to comply with the mandate = \$13,951,695

However, as discussed below, the actual costs claimed for feminine hygiene products in the initial claims is far lower than these estimates, although the documentation does support the estimated cost per product. There are several reasons why this might be the case including but not limited to the possibility that the schools have not been actually providing a *sufficient* number of feminine hygiene products *at all times*, many of the female pupils may have and prefer to use their own feminine hygiene products based on brand preference, or other reasons, and so fewer of the products being provided by the schools are actually being used, or, pupils may be using fewer feminine hygiene products than the number recommended by the FDA and Planned Parenthood.

- *Although a sufficient number of suitable dispensers to comply with the mandate is unknown, and will vary by school district, it is assumed that the dispensers purchased*

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<sup>62</sup> Exhibit A, Test Claim, filed December 7, 2018, page 25.

<sup>63</sup> Exhibit G, Purchase Order, ABC Unified School District, 2017-2018 Reimbursement Claim.

<sup>64</sup> Exhibit G, Purchase Order, Anaheim Union High School District, 2017-2018 Reimbursement Claim.

*and retrofitted during the initial period of reimbursement was determined to be the number necessary and sufficient to comply with the mandate.*

A sufficient number of dispensers to comply with the mandate is unknown. The Parameters and Guidelines state that “[t]he sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.”<sup>65</sup> The Test Claim Decision found that a “restroom” is commonly understood as “a room or suite of rooms in a public space provided with lavatory, toilet, and other facilities . . .”<sup>66</sup> Accordingly, no matter how many lavatories or toilets are in a room or suite of rooms, the mandate is to stock with feminine hygiene products in 50 percent of the rooms provided for that purpose at a school site. If a school has two sets of restrooms, one for men or boys and one for women or girls, it would be required to stock one restroom with tampons and sanitary napkins – and that would be the one for women or girls consistent with the spirit of the law. Likewise, if the school had 10 restrooms, five for men or boys and five for women or girls, it would be required to stock five restrooms. In addition, CDE recommends that separate toilets be provided for staff for safety and liability reasons.<sup>67</sup>

Based on the requirement “to stock 50 percent of the restrooms with feminine hygiene products at all times,”<sup>68</sup> there are enough dispensers in 50 percent of the restrooms if they can hold a sufficient number of products to make feminine hygiene products available at all times. Dispensers generally hold between 12 and 15 sanitary napkins or pads, and 19 and 22 tampons.<sup>69</sup> A school may choose to place multiple dispensers in each restroom required to be stocked, if it determines that multiple dispensers are necessary for the school to comply with the mandate to stock the feminine hygiene products at all times. If restrooms are stocked multiple times a day, fewer dispensers per restroom would be required. However, if they are only stocked one or two times per day, more dispensers might be necessary, especially in multi-stall restrooms in larger schools.

The reimbursement claims and the Controller’s Summary of Claims identify the number of schools required to comply with the mandate, the number of restrooms in each school required to

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<sup>65</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 26.

<sup>66</sup> Exhibit B, Test Claim Decision, adopted May 24, 2019, page 13.

<sup>67</sup> Exhibit G, California Department of Education, K-12 Toilet Requirement Summary – School Facility Design, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp#:~:text=California%20Code%20of%20Regulations%2C%20Title,or%20in%20the%20kindergarten%20complex.&text=CDE%20recommends%20that%20the%20location,the%20campus%20to%20ensure%20access> (accessed January 23, 2020).

<sup>68</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 25.

<sup>69</sup> Exhibit G, Google search for feminine hygiene dispensers, [https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF\\_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKewj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAGMECs&biw=1920&bih=969](https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKewj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAGMECs&biw=1920&bih=969) (accessed on July 1, 2020).

be stocked with feminine hygiene products, and the total number of dispensers purchased or retrofitted to comply with the mandate. For fiscal year 2017-2018, 923 schools were identified by the claimants as having to comply with the mandate.<sup>70</sup> The Controller's Summary of Claims identifies 9,494 restrooms that were required to be stocked with feminine hygiene products.<sup>71</sup> This number of restrooms needs to be adjusted, however, because the Controller's Summary of Claims for 2017-2018 transposes numbers identified by Little Lake City School District. The Controller's Summary of Claims states that Little Lake City School District reported 750 restrooms.<sup>72</sup> However, Little Lake City School District actually reported seven restrooms (for two schools required to comply with the mandate), a difference of 743 restrooms.<sup>73</sup> Deducting 743 restrooms from the total number of restrooms identified in the Controller's Summary of Claims results in 8,751 restrooms required to be stocked with feminine hygiene products in 2017-2018. In addition, a total of 8,187 dispensers were purchased and installed.<sup>74</sup> Thus, based on the claims data, the schools have an average of nine and a half restrooms each that are required to be stocked with feminine hygiene products (8,751 restrooms divided by 923 schools = 9.5 restrooms per school); and the claimants purchased and installed almost one dispenser per restroom to comply with the mandate (8,187 dispensers divided by 8,751 restrooms = .9 dispensers per restroom) in fiscal year 2017-2018.

Although it can be presumed that each of the restrooms required to be stocked now has at least one dispenser in place and able to comply with the mandate, the claims data does not identify how many dispensers were already in place and able to comply with the mandate without any retrofitting at all. As indicated in the Parameters and Guidelines, reimbursement to purchase and install new dispensers is required only to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate.<sup>75</sup>

For fiscal year 2018-2019, 891 schools identified as having to comply with the mandate claimed costs to stock 7,547 restrooms with feminine hygiene products;<sup>76</sup> and 871 dispensers were purchased or retrofitted by these schools to comply with the mandate.<sup>77</sup> Most of the school

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<sup>70</sup> Exhibit G, Excerpt, List of Schools from 2017-2018 Reimbursement Claims.

<sup>71</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 8.

<sup>72</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 5.

<sup>73</sup> Exhibit G, Excerpt from Little Lake City School District's 2017-2018 Reimbursement Claim, page 2. Female enrollment in grades six to 12 was reported as 750 pupils.

<sup>74</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 8. Although 15 dispensers were identified as having been retrofitted in fiscal year 2017-2018 by Little Lake City School District to comply with the mandate, the reimbursement claim filed by Little Lake City School District shows that the district purchased and installed 15 dispensers. (Exhibit G, Excerpt from Little Lake City School District's 2017-2018 Reimbursement Claim, page 2.)

<sup>75</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, pages 24-25.

<sup>76</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 12; Exhibit G, Excerpt, List of Schools from 2018-2019 Reimbursement Claims.

<sup>77</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 12. Although

districts that filed claims for 2017-2018 also filed claims for 2018-2019, and reported roughly the same number of restrooms required to be stocked with feminine hygiene products in the second year of claiming.<sup>78</sup> But the number of dispensers purchased or retrofitted per restroom decreased significantly in the second year of the mandate: 89 percent fewer dispensers were claimed in 2018-2019 compared to the prior year (871 divided by 8,187 dispensers = 11%).

Accordingly, although a sufficient number of dispensers to comply with the mandate statewide is not known, and will vary by school district, it is assumed that the dispensers purchased and retrofitted during the initial period of reimbursement (8,187 in 2017-2018<sup>79</sup> and 871 in 2018-2019<sup>80</sup>) was determined to be the number necessary and sufficient for the schools for which costs were claimed to comply with the mandate.

- *The future annual costs for Activity B. will likely decrease after the initial claiming period once a sufficient number of dispensers have been purchased and installed or retrofitted or repaired to comply with the mandate.*

The Commission found that “[r]eimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.”<sup>81</sup> Thus, schools will either retrofit or repair, or purchase and install new dispensers, whichever is more cost effective to comply with the mandate. Once the schools have a sufficient number of coin-free dispensers purchased and installed or retrofitted, however, future costs will likely decrease.

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120 dispensers were identified as having been retrofitted in fiscal year 2018-2019 to comply with the mandate, only the costs for three dispensers were specifically claimed for this activity.

<sup>78</sup> See Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 1-3. There are some minor differences, however. For example, ABC Unified School District identified 142 restrooms required to be stocked with feminine hygiene products in 2017-2018 and 143 restrooms in 2018-2019. (Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 4, 9.) Antelope Valley Union High School District identified 274 restrooms required to be stocked with feminine hygiene products in 2017-2018 and 273 restrooms in 2018-2019. (Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 4, 9.) Sacramento Unified School District identified 274 restrooms required to be stocked with feminine hygiene products in 2017-2018 and 262 restrooms in 2018-2019. (Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 6, 11.)

<sup>79</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 8. Although 15 dispensers were identified as having been retrofitted in fiscal year 2017-2018 by Little Lake City School District to comply with the mandate, the reimbursement claim filed by Little Lake City School District shows that the district purchased and installed 15 dispensers. (Exhibit G, Excerpt from Little Lake City School District’s 2017-2018 Reimbursement Claim, page 2.)

<sup>80</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 12. Although 120 dispensers were identified as having been retrofitted in fiscal year 2018-2019 to comply with the mandate, only the costs for three dispensers were specifically claimed for this activity.

<sup>81</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, pages 24-25.

The claims data shows an 89 percent decrease in the number of dispensers purchased and installed or repaired or retrofitted in the second year of the mandate. The useful life span of a metal dispenser is estimated at approximately 10 years, if considered as “machinery and equipment.”<sup>82</sup> However, according to a sanitary maintenance industry magazine article, feminine hygiene “[d]ispensers typically last 20 or more years with very minimal maintenance.”<sup>83</sup> The article also indicates theft and vandalism of the dispensers may occur.<sup>84</sup>

Thus, while dispensers will need repair or replacement if vandalized or stolen, it is expected that ongoing costs to purchase or repair dispensers will significantly decrease following the initial reimbursement period. Assuming a 10-year useful lifespan, it is assumed that ongoing annual costs for Activity B. will be approximately 10 percent of the annual costs for the initial claim period.

### **Estimated Costs and Cost Factors for Each Reimbursable Activity**

For the purpose of estimating statewide costs incurred for this program during the initial reimbursement period and the following years, the annual cost of each reimbursable activity has been estimated based on the assumptions discussed above.

#### **A. Activity A.: Stock 50 Percent of the School’s Restrooms with Feminine Hygiene Products (Defined only as Tampons and Sanitary Napkins) at All Times at No Cost to Pupils.**

Activity A. requires schools to stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

*Based on the assumptions and methodology discussed herein, the estimated statewide cost for Activity A., for the initial reimbursement period is estimated to be between \$664,260 and \$2,610,841. The cost for fiscal year 2019-2020 and following is estimated to be between \$444,784 to \$1,746,260, plus the implicit price deflator.*

FY 2017-2018 and 2018-2019:

\$664,260 = (costs actually claimed for Activity A. in the unaudited claims filed for the initial reimbursement period) to \$2,610,841= (costs actually claimed for Activity A. in the unaudited claims filed for the initial reimbursement period plus all potential costs that may be claimed for this activity in late or amended claims filed by school districts with schools required to comply with the mandate).

FY 2019-2020 and following:

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<sup>82</sup> Exhibit G, *Estimated Useful Life and Depreciation of Assets*, AssetWorks, <https://www.assetworks.com/useful-life-and-depreciation/> (accessed on August 12, 2020).

<sup>83</sup> Exhibit G, *Feminine Hygiene: The Untapped Market*, Clean Link, posted June 3, 2009, <https://www.cleanlink.com/sm/article/Feminine-Hygiene-The-Untapped-Market--11000> (accessed September 29, 2020), page 3.

<sup>84</sup> Exhibit G, *Feminine Hygiene: The Untapped Market*, Clean Link, posted June 3, 2009, <https://www.cleanlink.com/sm/article/Feminine-Hygiene-The-Untapped-Market--11000> (accessed September 29, 2020), page 3.

\$444,784 to \$1,746,260, plus the implicit price deflator = (The low end of the range assumes costs will continue to be claimed only by those school districts that filed claims in the initial reimbursement period, adjusted by a one percent decline in enrollment. The high estimate assumes that costs will be claimed by all California school districts with schools required to comply with the mandated program).

1. *The statewide cost for Activity A. for the initial reimbursement period is estimated at \$664,260 - \$2,610,841.*

For the initial reimbursement period (one and one half fiscal years), 115 school districts filed a total of 151 reimbursement claims for costs totaling \$664,260 to stock 50 percent of the schools' restrooms with feminine hygiene products (\$207,989 for 2017-2018 and \$456,271 for 2018-2019).<sup>85</sup>

As discussed above, it is assumed that in fiscal year 2017-2018 (with the mandate beginning January 1, 2018) a sufficient amount of tampons and sanitary napkins necessary to comply with the mandate is 69 products per female pupil in grades six to 12, and 138 products per female pupil in grades six to 12 in fiscal year 2018-2019. The Parameters and Guidelines and the Controller's claiming instructions requested the claimants to identify the total enrollment of female pupils in grades six to 12 in each school subject to the mandate and the total amount of feminine hygiene products purchased for each claim year. However, not all school districts that claimed costs for Activity A. identified these factors, and many claims only identified the total cost of the feminine hygiene products but not the amount purchased. Thus, the actual number of products used by female pupils during the initial reimbursement period cannot be calculated based on the claims data.

Since the claims data does not indicate how many products were purchased or used per pupil during the initial reimbursement period, and the costs of the product may vary, a better estimate of statewide costs can be determined by using the average cost claimed per pupil enrolled in grades six to 12 in the schools that claimed costs for Activity A. (which includes material and labor costs).

For fiscal year 2017-2018, the Controller's Summary of Claims states that \$207,989 was claimed for Activity A. by 84 school districts with 249,980 female pupils in grades six to 12.<sup>86</sup> However, to determine a per pupil amount, these numbers need to be adjusted. First, the \$2,725 in costs claimed for Activity A. by Merced City School District, are deducted from the total costs claimed for Activity A. because this school district did not report female enrollment.<sup>87</sup> This leaves the total costs claimed for Activity A. in fiscal year 2017-2018 at \$205,264.

In addition, the following school districts claimed no costs for Activity A. in fiscal year 2017-2018: Anaheim Union High School District (with 10,244 female pupils in grades six through

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<sup>85</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 8, 12.

<sup>86</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 8.

<sup>87</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 6. Please note that the Controller's Summary of Claims identifies this district as "Merced Elementary School District," but the reimbursement claim identifies the district as "Merced City School District." This analysis uses "Merced City School District," since that is the name of the district.

12), Center Joint Unified School District (with 1,153 female pupils in grades six through 12), Ceres Unified School District (with 3,078 female pupils in grades six through 12), Coachella Valley Unified School District (with 762 female pupils in grades six through 12), Cucamonga Unified School District (with 374 female pupils in grades six through 12), Oroville City Elementary School District (with 351 female pupils in grades six through 12), and West Contra Costa Unified School District (with 2,327 female pupils in grades six through 12).<sup>88</sup> Thus, the population of female pupils in grades six through 12 reported by these districts (18,289) is excluded from the population count identified in the Controller's Summary of Claims.

Finally, the Controller's Summary of Claims for 2017-2018 transposes numbers identified and claimed by Little Lake City School District. The Controller reports that Little Lake City had 7,403 female pupils enrolled in grades six through 12, had 750 total restrooms, and claimed costs for Activity A. totaling \$728.<sup>89</sup> However, a review of the fiscal year 2017-2018 reimbursement claim filed by Little Lake City shows that 7,403 was the total dollar amount claimed for that year; and that total female enrollment in grades six through 12 was 750.<sup>90</sup> Thus, to account for Little Lake City, female pupils enrolled in grades six through 12 in fiscal year 2017-2018 was adjusted by 6,653 pupils (7,403 shown in Controller's Summary of Claims, less 750 actual enrollment = 6,653). With these adjustments, the female enrollment in grades six through 12 in the school districts that claimed costs for Activity A. totals 225,038 (249,980 minus 18,289 = 231,691, minus 6,653 enrollment adjustment for Little Lake City = 225,038).

Thus, for fiscal year 2017-2018, per pupil costs for Activity A. amounts to \$.91 as follows: \$205,264 (total costs claimed, except for Merced City School District) divided by 225,038 females enrolled in grades six through 12 in the districts that claimed costs = \$.91 per pupil enrolled in grades six to 12 in the school districts that claimed costs for Activity A.

At \$.91 per pupil, total statewide costs could be as high as \$853,831 in fiscal year 2017-2018 if all school districts in California with schools required to comply with the mandate claim costs for Activity A. (\$.91 multiplied by 938,276 total estimated female pupils enrolled in grades six through 12 in schools required to comply with the mandate = \$853,831).

Therefore, for fiscal year 2017-2018, statewide costs for Activity A. to stock 50 percent of the school's restrooms with feminine hygiene products at all times at no cost to pupils, ranges from \$207,989 (costs claimed to date) to \$853,831.

Similarly, for fiscal year 2018-2019, \$456,271 was claimed for Activity A. by 67 school districts. The Controller's summary report specifies the total enrollment of female pupils in grades six to 12, as identified in the claims data for fiscal year 2018-2019, to be 243,807.<sup>91</sup> However, to determine an average cost per pupil for Activity A., the data for school districts that did not report female enrollment in grades six-12 and data for schools that did not claim costs for Activity A. are also excluded. Merced City School District is excluded since it did not report

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<sup>88</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 4-8.

<sup>89</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 5.

<sup>90</sup> Exhibit G, Excerpt from Little Lake City School District's 2017-2018 Reimbursement Claim, page 2.

<sup>91</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 12.

female enrollment and therefore the costs for the 66 school districts who did claim for Activity A. is reduced by the \$7,704 costs claimed by Merced City ( $\$456,271 - \$7,704 = \$448,567$ ).<sup>92</sup> In addition, the data for the following districts that did not claim costs for Activity A. for fiscal year 2018-2019 are excluded from this calculation: Jurupa Unified School District (4,821 female pupils in grades six through 12); Santa Cruz (988 female pupils in grades six through 12); and Westside Union Elementary School District (1,536 female pupils in grades six through 12).<sup>93</sup> With these adjustments, the female enrollment in grades six through 12 in the school districts that claimed costs for Activity A. in fiscal year 2018-2019 totals 236,462 ( $243,807 - 7,345 = 236,462$ ).

Thus, for fiscal year 2018-2019, the per pupil cost for Activity A. amounts to \$1.90 as follows:  $\$448,567$  (total costs claimed by the 66 districts that included the number of female pupils in grades six through 12) divided by 236,462 females enrolled in grades six through 12 in the districts that claimed costs = \$1.90 per pupil. It is noteworthy that this represents the estimated cost for less than 18 products per female pupil in grades six through 12 per year (at 11 cents per product, and not accounting for any labor costs), which is far fewer than the estimated 138 products per year that a pupil is estimated to need during school hours over the course of a fiscal year according to FDA and Planned Parenthood recommendations.

At \$1.90 per female pupil in grades six through 12, total statewide costs could be as high as \$1,757,010 for fiscal year 2018-2019 if all school districts in California with schools required to comply with the mandate claim costs for Activity A. ( $\$1.90$  multiplied by 924,742 total estimated female pupils enrolled in grades six through 12 in schools required to comply with the mandate = \$1,757,010).

Therefore, for fiscal year 2018-2019, statewide costs for Activity A. to stock 50 percent of the school's restrooms with feminine hygiene products at all times at no cost to pupils, ranges from \$456,271 (costs claimed to date) to \$1,757,010.

2. *The estimated future annual cost for Activity A. is \$444,784 to \$1,746,260, plus the implicit price deflator beginning fiscal year 2019-2020, and is expected to decrease slightly based on a projected one percent annual decline in enrollment from 2020-2021 through 2027-2028.*

As indicated above, a total of 115 school districts filed reimbursement claims with the State Controller's Office during the initial reimbursement period (97 for 2017-2018 and 72 for 2018-2019), and have identified costs incurred by a total of 1,140 schools within their districts, representing just 20 percent of the schools in the State estimated to be required to comply with this program. In addition, not all of the 115 school districts requested reimbursement for Activity A. for both 2017-2018 and 2018-2019; 84 districts claimed costs for Activity A. for fiscal year 2017-2018, and 67 school districts claimed costs for Activity A. for fiscal year 2018-2019. However, the enrollment of female pupils in grades six to 12 in the school districts that

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<sup>92</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 10. Please note that the Controller's Summary of Claims identifies this district as "Merced Elementary School District," but the reimbursement claim identifies the district as "Merced City School District." This analysis uses "Merced City School District," since this is the name of the district.

<sup>93</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 10-12.

filed reimbursement claims for Activity A. for fiscal year 2018-2019 and the cost of Activity A. per pupil for fiscal year 2018-2019 are higher than the enrollment and cost per pupil in fiscal year 2017-2018, primarily because the mandate was only in effect for the last half of fiscal year in 2017-2018. It is assumed that reimbursement claims for Activity A. will continue to be claimed in the future similarly to those claimed in fiscal year 2018-2019, except that female enrollment in those school districts is projected to decrease by one percent in fiscal year 2019-2020 (assuming a 1% decline of enrollment per year, based on Finance's projection that enrollment will decline by 7% between 2020-2021 and 2027-2028). Therefore, assuming that only the districts that filed claims during the initial claiming period continue to file claims, that the cost of Activity A. per pupil remains \$1.90, and that female enrollment in grades six to 12 in the school districts that continue to file claims in fiscal year 2019-2020 is 234,097 (236,462 - 2,365 = 234,097), then future costs for Activity A. are estimated at \$444,784, plus the implicit price deflator and will decrease with a one percent reduction in enrollment each year beginning 2020-2021.

However, if all school districts with schools required to comply with the mandate file reimbursement claims for Activity A. for fiscal year 2019-2020, then costs could increase to \$1,746,260, plus the implicit price deflator. As indicated above, the estimated number of female pupils in grades six through 12 in all California schools mandated to comply with the program is 919,084 for 2019-2020. If the cost per pupil to stock 50 percent of the schools' restrooms with feminine hygiene products remains at \$1.90 per pupil, then the estimated costs, beginning in fiscal year 2019-2020, is \$1,746,260, plus the implicit price deflator.

Accordingly, the estimated future annual costs beginning fiscal year 2019-2020 for Activity A. is \$444,784 to \$1,746,260, plus the implicit price deflator.

**B. Activity B.: Purchase and Install (or Retrofit or Repair) a Sufficient Number of Suitable Dispensers for Feminine Hygiene Products (Defined only as Tampons and Sanitary Napkins) in 50 Percent of the School's Restrooms.**

Activity B. provides ongoing reimbursement to purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms. The Parameters and Guidelines further state the following:

The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

*Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.<sup>94</sup>*

Total costs claimed in the initial reimbursement period to purchase and install and repair

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<sup>94</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 26.

and retrofit dispensers is \$827,260 (\$826,309 to purchase and install 8,938 dispensers, and \$951 to retrofit three dispensers).

As recognized in the Parameters and Guidelines Decision, some schools may already be equipped with a sufficient number of suitable dispensers in their restrooms to comply with the mandate and, thus, would not need to incur increased costs to purchase new dispensers.<sup>95</sup> In addition, based on information publicly available, some schools may have existing dispensers, including coin dispensers, that can be repaired or modified to provide the feminine hygiene products at no cost to the pupils and at a fraction of the cost to purchase new dispensers.<sup>96</sup> Under these circumstances, it would only be necessary to repair or retrofit the dispensers to comply with the mandate, and would not be necessary to incur increased costs to buy all new dispensers.<sup>97</sup> The Parameters and Guidelines only allow reimbursement to purchase and install new dispensers if it is more cost effective than to retrofit or repair.<sup>98</sup>

It is assumed that the dispensers purchased and installed or retrofitted in the initial claim years was determined by the claimants to be the necessary number of dispensers sufficient to comply with the mandate to stock the product at all times at no cost to the pupils. It is further assumed that the annual cost to purchase and install, or retrofit and repair dispensers will decrease in future years to ten percent of the annual costs for the first year of the mandate 2017-2018.

***Based on the assumptions and methodology discussed herein, the total cost for Activity B., for the initial reimbursement period is estimated to be between \$827,260 and \$3,182,154. The cost for fiscal year 2019-2020 and following is estimated to be between \$82,726 and \$340,061, plus the implicit price deflator.***

FY 2017-2018 and 2018-2019:

\$827,260 = (Costs actually claimed for Activity B. in the unaudited timely filed claims for the initial reimbursement period) to \$3,182,154 = (Costs actually claimed for Activity B. in the unaudited timely filed claims for the initial reimbursement period plus all potential costs that may be claimed for this activity in late or amended claims filed by school districts with schools required to comply with the mandate).

FY 2019-2020 and following:

\$82,726 = (Assumes that only those districts that have already filed reimbursement claims will continue to claim 10% of the costs claimed for Activity B. for the initial claim period for fiscal year 2019-2020 and following) to \$340,061, plus the implicit price deflator = (Assumes that all school districts with schools required to comply with the mandate will claim 10% of the average cost of dispensers per pupil in the initial claiming period for fiscal year 2019-2020 and following).

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<sup>95</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 18.

<sup>96</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 18.

<sup>97</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 19.

<sup>98</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 26.

1. *The statewide costs for Activity B. (purchase and install [or retrofit or repair] dispensers) for the initial reimbursement period, fiscal years 2017-2018 and 2018-2019, is estimated to be between \$827,260 and \$3,182,154.*

For the initial claiming period, there were 125 claims submitted by 106 school districts for labor and material costs for 986 schools to comply with Activity B.1. to purchase and install dispensers totaling \$826,309 (\$683,908 for 2017-2018 and \$142,401 for 2018-2019).<sup>99</sup> The Controller's Summary of Claims shows that the costs of 8,187 dispensers were claimed for fiscal year 2017-2018, and 751 dispensers were claimed for fiscal year 2018-2019, representing a decrease of 92 percent in the number of dispensers claimed for the second year of the mandate.<sup>100</sup>

Also, for the initial claiming period, seven school districts indicated that they repaired or retrofitted a total of 120 dispensers, all in 2018-2019.<sup>101</sup> However, only one district, Santa Maria Joint Union High School District, properly claimed costs under activity B.2. to repair or retrofit three dispensers for a total of \$951 and all of the other district's costs were either not claimed, were claimed under another activity (such as under B.1.) or were not segregated by activity, as required.<sup>102</sup> Additionally, with respect to retrofitted dispensers, the Controller's Summary of Claims indicates that Santa Maria Joint Union High School District repaired three dispensers, and Santa Maria's claim form states that three dispensers were repaired.<sup>103</sup> The invoice attached to the claim form shows that 15 hours of labor were claimed for "Stainless Steel Dispensers Labor and additional welding" at a rate of \$58.50 per hour for a total of \$877.50, and three "3/16 x 1 304 SS Strip [stainless steel strips]" were claimed at \$22.53 each for a total of \$67.59, for

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<sup>99</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 8, 12. A total of only 106 school districts claimed costs for Activity B.1. in the initial claiming period: 88 for fiscal year 2017-2018 and 37 for fiscal year 2018-2019.

<sup>100</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 8, 12. Note that although the Controller's Summary of Claims Reported as of June 30, 2020 indicates that Little Lake City School District repaired or retrofitted 15 dispensers in fiscal year 2017-2018, Little Lake City's reimbursement claim indicates that those new Evogen dispensers were purchased and installed and not retrofitted and the costs were claimed under B.1., not B.2. (Excerpt from Little Lake City School District's 2017-2018 Reimbursement Claim, page 2.)

<sup>101</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 9-11 (The following districts indicated they repaired or retrofitted dispensers: Beaumont, Ceres, Riverdale, Santa Maria Joint Union High School District, Visalia, Vista, and Westside). Note that although the Controller's Summary of Claims Reported as of June 30, 2020 indicates that Little Lake City School District repaired or retrofitted 15 dispensers in fiscal year 2017-2018, Little Lake City's reimbursement claim indicates that those new Evogen dispensers were purchased and installed and not retrofitted and the costs were claimed under B.1., not B.2.

<sup>102</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 11.

<sup>103</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 11; Exhibit G, Excerpt from Santa Maria Joint Union High School District's 2018-2019 Reimbursement Claim, page 1.

grand total of \$950.50; the amount claimed by Santa Maria under Activity B.2.<sup>104</sup> And, as mentioned, none of the other six districts that, together with Santa Maria, indicated they retrofitted or repaired a total of 120 dispensers, correctly claimed costs for that activity under Activity B.2. Thus, we are limited to only Santa Maria's average cost of \$316.83 per unit to retrofit dispensers for purposes of this analysis. Unfortunately, due to a lack of data, it is unclear whether Santa Maria's costs are actually typical. And additionally, since they are the costs to retrofit rather than repair, it is unclear to what extent these costs would be reflective of future costs for repairs on existing dispensers which do not need to be retrofitted.

With \$827,260 in total costs claimed for the initial period of reimbursement to purchase and install (or retrofit or repair) a total of 9,058 dispensers (8,938 purchased and installed and 120 retrofitted or repaired), the average labor and material cost per dispenser during the initial claim period is \$91.33. This is less than expected since the test claimant's costs were \$157 to \$170 per unit, and regular retail prices for such dispensers range from as low as \$187.82 to \$800 or more.<sup>105</sup> Perhaps vendor discounts were provided and perhaps some of the costs to retrofit or repair (which may have been lower than costs incurred by Santa Maria) were inadvertently claimed under Activity B.1. instead of Activity B.2.

Overall, however, a total of 112 school districts identified 9,058 dispensers which were either purchased and installed or retrofitted or repaired during the initial claiming period.<sup>106</sup> And, because of the claiming issues and the uncertainty regarding whether it will be most cost effective to repair or to purchase and install dispensers as they become damaged, this analysis combines the costs for Activity B.1. and Activity B.2. for purposes of calculating the average cost per pupil for Activity B. to use for estimating the potential costs for late and amended initial claims and future costs.

As indicated above, it is estimated that 5,653 schools in fiscal year 2017-2018 and 5,630 schools in fiscal year 2018-2019 are required to comply with the mandate, and may still file late claims. The Parameters and Guidelines and claiming instructions require school districts to report the total number of restrooms in the schools required to comply with the mandate, and the number of dispensers purchased or retrofitted or repaired. Although there is no information about how many dispensers the schools already had and were able to use for this mandate, the number of dispensers repaired, retrofitted or purchased and installed provides some indication of how many dispensers the schools determined were sufficient to comply with the mandate and what the cost for those dispensers was.

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<sup>104</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 11; Exhibit G, Excerpt from Santa Maria Joint Union High School District's 2018-2019 Reimbursement Claim, page 1.

<sup>105</sup> Exhibit A, Test Claim, filed December 7, 2018, pages 21, 23 (Declaration of Jordan Aquino, Chief Business Officer, Desert Sands USD), and 26 (purchase order for the 2017-2018 purchase of dispensers); Exhibit G, Google search for feminine hygiene dispensers, [https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF\\_enUS891US891&source=univ&tbn=shop&tbo=u&sa=X&ved=2ahUKEwj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAgMECs&biw=1920&bih=969](https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF_enUS891US891&source=univ&tbn=shop&tbo=u&sa=X&ved=2ahUKEwj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAgMECs&biw=1920&bih=969) (accessed on July 1, 2020).

<sup>106</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 4-12.

To estimate statewide costs for Activity B., the average cost claimed for Activity B. per female pupil enrolled in grades six through 12 in the school districts that filed reimbursement claims was multiplied by the estimated number of female pupils in grades six through 12 in schools statewide that are required to comply with the mandate. Thus, for fiscal year 2017-2018, the Controller's Summary of Claims shows that \$683,908 was claimed for Activity B. for 8,187 dispensers.<sup>107</sup> For fiscal year 2017-2018, the total enrollment of female pupils in grades six to 12 in the districts that filed reimbursement claims was 243,327.<sup>108</sup> With costs totaling \$683,908 claimed for Activity B. for fiscal year 2017-2018, a per pupil amount to purchase and install dispensers totals \$2.81 (\$683,908 divided by 243,327 = \$2.81).

At \$2.81 per pupil, total statewide costs could be as high as \$2,636,556 for fiscal year 2017-2018 if all school districts with schools required to comply with the mandate claim costs for Activity B. (\$2.81 multiplied by 938,276, total estimated female pupils enrolled in grades six through 12 in schools required to comply with the mandate in fiscal year 2017-2018). Therefore, for fiscal year 2017-2018, statewide costs for Activity B. range from \$683,908 to \$2,636,556.

Similarly, for fiscal year 2018-2019, the Controller's Summary of Claims shows that \$143,352 was claimed for Activity B. for 871 dispensers, and that the total enrollment of female pupils in grades six to 12 in the districts that filed reimbursement claims was 243,807. With \$143,352 claimed for Activity B. for fiscal year 2018-2019, a per pupil amount to purchase and install or repair or retrofit dispensers totals \$.59 (\$143,352 divided by 243,807 = \$.59).

At \$.59 per pupil, total statewide costs could be as high as \$545,598 for fiscal year 2018-2019 if all school districts in California with schools required to comply with the mandate claim costs for Activity B. (\$.59 multiplied by 924,742, total estimated female pupils enrolled in grades six through 12 in schools required to comply with the mandate in fiscal year 2018-2019.) Therefore, for fiscal year 2018-2019, the statewide cost for Activity B. is estimated to be between \$143,352 to \$545,598.

Accordingly, the statewide cost for Activity B. for the initial reimbursement period, fiscal years 2017-2018 and 2018-2019, is estimated to be between \$827,260 to \$3,182,154.

2. *The estimated future annual costs beginning fiscal year 2019-2020 for Activity B. to maintain a sufficient number of dispensers to comply with the mandate, is estimated to be between \$82,726 and \$340,061, plus the implicit price deflator.*

As indicated in the assumptions above, it is expected that the costs for Activity B. (to purchase and install, or retrofit and repair a sufficient number of dispensers) will decrease significantly after the initial reimbursement period. The useful life span of a metal dispenser is estimated at 10 years and can last significantly longer, thus, the ongoing costs will be limited to minimal

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<sup>107</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 8.

<sup>108</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 6. Note that the Summary of Claims shows the enrollment of female pupils in grades six to 12 at 249,980 due to a transposing of the numbers for Little Lake City School District to indicate that there were 7,403 female pupils enrolled in grades six through 12, 750 restrooms required to be stocked, and costs for Activity A. of \$728, when actually it should say that there are 750 female pupils enrolled in grades six through 12, 728 restrooms, and cost of \$7,403 claimed for Activity A.

repairs or the occasional replacement if that is more cost effective.<sup>109</sup>

Given the estimated long life of a metal dispenser, and that school districts purchased and installed or retrofitted and repaired a sufficient number of dispensers to comply with the mandate in the initial years of the mandate, it is expected that costs claimed for Activity B. in future fiscal years to maintain a sufficient number of dispensers to comply with the mandate beginning in fiscal year 2019-2020 will decrease to ten percent of the total costs claimed for Activity B. in the initial reimbursement period. Thus, assuming that ten percent of the costs will be claimed in the future, that reimbursement claims for Activity B. will continue to be claimed by the same school districts that filed reimbursement claims for the initial claims years, and that the costs to purchase and install or retrofit or repair dispensers remains the same as the initial claim years, then future costs are estimated at \$82,726, plus the implicit price deflator (total costs of \$827,260 x 10% = \$82,726). The decrease in the number of dispensers claimed for under B. in the second claim year is consistent with and supports the assumption that once a sufficient number of dispensers have been retrofitted, repaired or purchased and installed, the on-going cost per pupil for repair or replacement will constitute approximately 10 percent of the cost per pupil to initially retrofit, repair, or purchase and install a sufficient number of dispensers.

However, if all school districts with schools required to comply with the mandate file reimbursement claims for Activity B. in fiscal year 2019-2020, then costs could increase to \$340,061, plus the implicit price deflator. As indicated above, the estimated number of female pupils in grades six through 12 in all schools mandated to comply with the program is estimated at 919,084 for 2019-2020. If the average cost claimed to purchase and install or retrofit and repair dispensers in the initial claiming period remains at \$91.33 per dispenser (\$827,260 total costs claimed for Activity B. divided by 9,058 dispensers purchased and installed or retrofitted and repaired); and that .04 dispensers per pupil is sufficient to comply with the mandate as determined by the school districts that claimed costs (9,058 total dispensers purchased and installed or retrofitted or repaired, divided by 243,807 female pupils enrolled in grades six to 12 in fiscal year 2018-2019 in the school districts that filed reimbursement claims)<sup>110</sup>; then the cost per pupil for a sufficient number of dispensers to comply with the mandate in the initial claiming period is \$3.65 (\$91.33 x .04). Assuming that future costs to maintain a sufficient number of dispensers to comply with the mandate is ten percent of the cost per pupil in the initial claiming period, the cost would be .37 cents per pupil (\$3.65 x .10). With 919,084 female pupils in grades six to 12 in all schools mandated to comply with the program in fiscal year 2019-2020, the high end of the cost range is estimated at \$340,061 to purchase and install, or retrofit or repair a sufficient number of dispensers to comply with the mandate in 2019-2020 and future years.

Accordingly, the statewide cost estimate for Activity B. for the fiscal years 2019-2020 and following, is estimated to be between \$82,726 and \$340,061.

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<sup>109</sup> Exhibit G, *Estimated Useful Life and Depreciation of Assets*, AssetWorks, <https://www.assetworks.com/useful-life-and-depreciation/> (accessed on August 12, 2020); Exhibit G, California School Accounting Manual, 2019, <https://www.cde.ca.gov/Fg/ac/sa/documents/csam2019complete.pdf> (accessed on August 12, 2020), page 2.

<sup>110</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 12.

### C. Indirect Costs

The Parameters and Guidelines authorize claimants to claim reimbursement for indirect costs as follows:

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.<sup>111</sup>

***Based on the assumptions and methodology discussed herein, the estimated indirect costs for the initial reimbursement period between \$56,750 to \$231,720, and for 2019-2020 and following is \$21,100 to \$83,453.***

FY 2017-2018 and 2018-2019:

\$56,750 to \$231,720 (The low estimate includes total indirect costs claimed in the unaudited timely filed reimbursement claims. The high estimate assumes indirect costs will be claimed by all California school districts with schools required to comply with the mandate at a rate of 4%).

FY 2019-2020 and following:

\$21,100 to \$83,453 (The low estimate assumes costs claimed in fiscal year 2018-2019 per pupil will continue to be claimed in future annual years, adjusted by a 1% decline in enrollment, and that indirect costs will continue to be claimed at an average rate of 4%. The high estimate assumes that the average direct cost per pupil claimed in fiscal year 2018-2019 will be claimed in 2019-2020 by all school districts with schools required to comply with the mandate and that the indirect costs of 4%, the average indirect cost rate claimed in the timely unaudited initial claims, are claimed).

1. *The statewide indirect costs for the initial reimbursement period, fiscal years 2017-2018 and 2018-2019, are estimated to be between \$56,750 to \$231,720.*

During the initial period of reimbursement, fiscal years 2017-2018 and 2018-2019, \$56,750 was claimed as indirect costs, which constitutes an average indirect cost rate of four percent (\$56,750 divided by total direct costs of \$1,491,520 claimed for Activities A. and B.). If all school districts with schools required to comply with the mandate file late or amended reimbursement claims for fiscal years 2017-2018 and 2018-2019, then statewide indirect costs will increase.

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<sup>111</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 27.

This increase can be determined by calculating the average indirect cost rate claimed by the school districts that filed timely claims and multiplying that by the estimated direct costs of the program if all school districts with schools required to comply with the mandate filed reimbursement claims for fiscal years 2017-2018 and 2018-2019 ( $\$5,792,995 \times 4\% = \$231,720$ ).

Accordingly, statewide indirect costs for the initial reimbursement period, fiscal years 2017-2018 and 2018-2019, are estimated to be between \$56,750 and \$231,720.

2. *The estimated future annual statewide indirect costs beginning fiscal year 2019-2020 are estimated to be between \$21,100 and \$83,453.*

As indicated above, total estimated future annual statewide direct costs beginning fiscal year 2019-2020 are between \$527,510 (based on the assumption that the costs for Activities A. and B. will continue to be claimed in the future only by those school districts that filed claims in the initial reimbursement period, adjusted by a 1% decline in enrollment) and \$2,086,321 (assuming that the average direct cost per pupil claimed for Activities A. and B. in fiscal year 2018-2019 will be claimed in 2019-2020 by all school districts with schools required to comply with the mandated program). Assuming the average indirect cost rate remains at four percent, then future annual indirect costs are estimated to be between \$21,100 ( $\$527,510 \times 4\%$ ) and \$83,453 ( $\$2,086,321 \times 4\%$ ).

**D. Late Claim Penalties for Fiscal Years 2017-2018 and 2018-2019 Are Estimated to Be Between \$815 and \$448,460.**

Government Code section 17561(C)(3) states that “Any claim for initial reimbursement filed after the filing deadline shall be reduced by 10 percent of the amount that would have been allowed had the claim been timely filed.” In fiscal year 2017-2018, the Controller’s Summary of Claims shows that penalties amounting to \$523 were taken for the following late claims:

Enterprise Elementary School District - \$24 (.5% late claim penalty on \$4,170)<sup>112</sup>

Golden Plains Unified School District - \$331 (10% late claim penalty on \$3,310)<sup>113</sup>

Reef Sunset Unified School District - \$168 (10% late claim penalty on \$1,675)<sup>114</sup>

The late claim penalty imposed on Enterprise Elementary School District is unusual, since the amount is much less than the ten percent required to be taken pursuant to Government Code section 17561 and this claim was dated July 15, 2020, later than the other late claims - though perhaps there were extenuating circumstances.

For fiscal year 2018-2019, Golden Plains Unified School District received a late claim penalty of \$292, based on the \$2,921 claimed. Thus, during the initial claim period, late claim penalties totaled \$815.

As indicated above, the reimbursement claims filed by 115 school districts represents just 20 percent of the schools in the State estimated to be required to comply with this program during the initial period of reimbursement and, thus, late claims are likely to be filed. Thus, estimated

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<sup>112</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 4.

<sup>113</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 5.

<sup>114</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 6.

late claim penalties are based on the estimated statewide direct and indirect costs for those school districts with schools required to comply with the mandate that may still file late or amended claims for the initial claiming period, less the costs that have been claimed, times ten percent, resulting in \$448,460 total estimated late claim penalties for fiscal years 2017-2018 and 2018-2019 (\$6,024,715 in estimated statewide direct and indirect costs that may yet be claimed - \$1,548,270 in costs claimed = \$4,476,445 x 10% = \$447,645 + \$815 in penalties already assessed).

Thus, late claim penalties for the initial reimbursement period are estimated between \$815-\$448,460.

### **Draft Proposed Statewide Cost Estimate**

On November 2, 2020, Commission staff issued the Draft Proposed Statewide Cost Estimate.<sup>115</sup> No comments were filed on the Draft Proposed Statewide Cost Estimate.

### **Conclusion**

On December 4, 2020, the Commission adopted this Statewide Cost Estimate of \$1,547,455 - \$5,576,255 for the initial reimbursement period of fiscal years 2017-2018 and 2018-2019, and the estimated cost for fiscal year 2019-2020 and following of \$548,610 - \$2,169,774 plus the implicit price deflator.

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<sup>115</sup> Exhibit F, Draft Proposed Statewide Cost Estimate, issued November 2, 2020.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

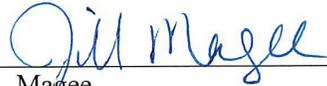
On December 9, 2020, I served the:

- **Statewide Cost Estimate adopted December 4, 2020**

*Public School Restrooms: Feminine Hygiene Products, 18-TC-01*  
Education Code Section 35292.6 as added by Statutes 2017, Chapter 687 (AB 10)

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 9, 2020 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 12/7/20

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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November 14, 2023

Hon. Rob Bonta  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Anabel Renteria  
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed measure (A.G. File No. 23-0027, Amendment #2) related to schools notifying parents of a student's gender identity; school, college, and university sex-segregated facilities and athletic programs and activities; and certain gender-affirming medical treatments for individuals under the age of 18 years.

## Background

### Gender Identity

*Some People Are Transgender or Nonbinary.* Gender identity generally refers to a person's internal sense of being male, female, or something else. Transgender persons identify differently than the sex they were assigned at birth. For example, transgender females identify as female but were assigned male at birth, while transgender males identify as males but were assigned female at birth. Also, gender nonbinary persons identify as both male and female, somewhere in between, or neither.

*Various Ways Transgender and Nonbinary Persons Can Affirm Their Gender Identity.* Transgender and nonbinary persons may change their name, use different pronouns, or wear certain clothing to change their body shape and physical appearance to affirm their gender identity. Additionally, transgender and nonbinary persons can receive certain health care services, including mental health services and medical treatments. Medical treatments can include prescription drugs to postpone the development of puberty (known as "puberty blockers"), hormone therapies, and surgeries. For transgender children, decisions around which

  
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treatment to provide and when to provide the treatment are made jointly by the physician and parent of the child, generally following professionally recognized standards.

***Transgender and Nonbinary Persons Are a Small Share of California’s Total Population.***

While there is limited data on the number of transgender and nonbinary persons in California, the Williams Institute at the University of California, Los Angeles School of Law estimates about 200,000 of the state’s 33 million population aged 13 years and over (less than 1 percent) identify as transgender. Transgender and nonbinary persons generally comprise similarly small shares of students and staff in California’s public education system and people enrolled in the state’s publicly funded health programs.

## **Education**

***State Law and Policy Includes Certain Protections for Transgender and Nonbinary***

***Students.*** State law includes provisions prohibiting discrimination based on sex, gender, gender identity, and gender expression. For example, existing state law requires students in public K-12 schools be permitted to use facilities and participate in athletic programs and activities consistent with their gender identity, regardless of what sex is listed on the student’s official school record. While not required by state law, the general policy of California colleges and universities is to allow students to use facilities based on their gender identity, maintain all-gender restrooms on campuses, and allow transgender students to participate in athletic programs and activities based on their gender identity under certain conditions.

***Federal Law and Policy Also Include Certain Protections.*** Title IX of the Education Amendments of 1972 prohibits schools, colleges, and universities receiving federal funds from discriminating against individuals based on their sex. The U.S. Department of Education currently interprets Title IX as also prohibiting federally funded schools, colleges, and universities from discriminating based on gender identity. (Currently, 20 states—not including California—are temporarily exempt from the gender-based interpretation of Title IX due to pending litigation.) In the fall of 2023, the federal government is expected to release new Title IX regulations on the prohibition of gender discrimination and rules for gender-based participation in federally funded school, college, and university athletic programs.

***State Law Allows Transgender and Nonbinary Students to Participate in Either Girls State or Boys State Conferences.*** The American Legion and American Legion Auxiliary Organization operate separate week-long leadership conferences for high school students known as Boys State and Girls State conferences. Existing state law exempts the conferences from sex discrimination provisions, meaning participation in each conference can be segregated based on sex. However, as a condition of being exempt from sex discrimination provisions, gender nonbinary and transgender students must be allowed to participate in either Girls State or Boys State conferences.

## **Health**

***State Law Protects Access to Gender-Affirming Medical Care.*** A number of laws in California protect access to gender-affirming medical care for transgender individuals. For example, California law prohibits health insurance plans from discriminating against transgender

patients, including by denying patients access to gender-affirming treatments when the treatments are medically necessary.

***Federal Law and Policy Also Include Certain Protections.*** Section 1557 of the Patient Protection and Affordable Care Act prohibits discrimination on the basis of race, color, national origin, age, disability, or sex in health programs or activities receiving federal funds. With regard to sex, the law prohibits discrimination as defined in Title IX (described earlier). The federal government has released guidance indicating that sex discrimination includes discrimination on the basis of sexual orientation and gender identity. This guidance is the subject of litigation in the federal court system.

***California Helps Pay for Health Care for Many Individuals, Including Gender Affirming Medical Care.*** State and local governments help certain Californians pay for health care through a number of different programs. For example, Medicaid, known as “Medi-Cal” in California, provides health coverage to eligible low-income California residents and enrolls around one-third of Californians. It is funded from a mix of federal, state, and local funds. Health care services covered by Medi-Cal include gender affirming medical treatments for transgender individuals, generally when considered to be medically necessary.

***California Licenses Health Care Providers.*** California law requires health insurance plans, health care providers, and health care facilities to be licensed to provide health care services. Several departments are responsible for licensing health care entities in California. For example, the Department of Consumer Affairs includes numerous licensing boards that license health care providers, such as physicians, nurses, and pharmacists, among others. These departments and boards generally cover the cost to license providers and investigate complaints by charging affected providers fees and fines.

## PROPOSAL

***Defines Biological Sex.*** State law does not define biological sex. The measure defines biological sex as either male or female, based on specified physiological and genetic attributes. Additionally, under the measure, the biological sex listed on a student’s birth certificate would be considered correct only if it was entered at or near the time of the student’s birth or modified to correct any clerical errors.

***Requires Schools Notify Parents and Legal Guardians if a Student Requests to Be Treated as a Gender Different From Official School Records.*** Public schools are required to maintain official student records which include basic student information, including legal name and sex. The measure requires official school records to include other names—in addition to the student’s legal name—and the gender submitted by the student’s parents or legal guardians at enrollment, which would be used to refer to the student by school staff. The measure requires schools to notify parents and legal guardians as soon as practicable, but preferably within three days, when a student under the age of 18 or “any person acting on behalf of a [student]” requests that the student be treated as a gender different than what is listed in official records. Requests that would trigger a notification to parents or legal guardians include, but are not limited to, a student asking the school to address them by a different name or pronouns. Schools must obtain written approval from a student’s parents or legal guardians before the school, teachers, administrators,

certified staff, school counselors, employees, or agents of the school can provide any gender-related accommodations.

***Prohibits Transgender Female Students From Participating in Athletic Programs or Activities Designated for Biological Female Students.*** The measure repeals existing state law that allows students to participate in sex-segregated K-12 school programs and activities, including athletic teams and competitions, consistent with the student's gender identity regardless of what gender is listed on the student's official school record. The measure also requires participation in any athletic program or activity designated for female students to be based on biological sex, not gender identity. This means transgender girls and women would not be able to participate in athletic programs and activities designated for biological females. The prohibition would apply to both public and private institutions and schools serving any students from grades 7 to 12 and colleges and universities.

***Requires Sex-Segregated Facilities on School, College, and University Campuses Be Segregated Based on Biological Sex.*** The measure repeals existing state law allowing students to use K-12 school facilities based on their gender identity. The measure also requires use of sex-segregated facilities (such as restrooms and locker rooms) at schools, colleges, and universities be based on biological sex. For example, a transgender female would need to use an all-gender restroom or the restroom designated for biological males. This requirement would apply to both private and public institutions and to students, staff, and any other person on school, college, and university campuses.

***Eliminates Requirement to Allow Gender Nonbinary and Transgender Students to Participate in Either Girls State or Boys State Conferences.*** The measure repeals existing state law that requires gender nonbinary and transgender students be allowed to participate in either Girls State or Boys State conferences. As a result, whether gender nonbinary and transgender students can participate in either conference based on their gender identity, regardless of their biological sex, would be a decision made by the conference administrators.

***Prohibits Providing Certain Medical Treatments That Affirm a Different Gender Than Biological Sex for Youth.*** The measure prohibits health care providers (such as a physician or a nurse) from providing patients under the age of 18 certain medical treatments that affirm a gender identity different than the patient's biological sex. The prohibition specifically would apply to prescribing or administering puberty blockers, hormones or hormone antagonists, and surgery or medical procedures. The measure allows for certain exceptions from this prohibition, such as treatments for children born with a medically verifiable genetic disorder of sexual development. Other than services meeting these exceptions, providing a prohibited medical service under the measure would be considered unprofessional conduct and subject to discipline, including revoking of the health care provider's license or certification.

## **Fiscal Effects**

***No Fiscal Effects if Not Implemented.*** In recent years, several states have enacted policies similar to this measure, including prohibiting certain gender-affirming medical treatments for children; requiring parental notification for gender-related accommodations at schools; and restricting the use of sex-segregated facilities and participation in athletic programs and activities

at schools, colleges, and universities to biological sex. In addition, some schools in California have enacted parental notification policies similar to the one proposed in this measure. Many of the above policies are being litigated in the state and federal court system to determine whether they conflict with the State Constitution, United States Constitution, and other federal laws. At the time of this analysis, the courts have allowed policies in some states to take effect, while policies in other states have not been allowed to go into effect. If a court were to rule policies similar to provisions included in the measure (or the measure itself) could not go into effect, then those provisions would have no fiscal effect on the state or local government. The fiscal effects described below assume the provisions of the measure can be fully implemented.

***Potential Minor Savings From No Longer Covering Prohibited Medical Treatments.*** State and local government health programs that pay for gender-affirming puberty blockers, hormone therapies, and surgeries for youth could no longer do so. The savings could be as much as in the millions of dollars annually, which represents a very small share of overall state and local spending (for example, the state General Fund provides \$37.5 billion to Medi-Cal in 2023-24). In the long run, the savings could be impacted by many other factors. For example, some Medi-Cal enrollees under the age of 18 may choose to receive gender-affirming medical services when they are adults. In these cases, some of the spending associated with prohibited services would still occur, but at a later time for the individual. Prohibiting certain gender-affirming medical treatments on individuals under the age of 18 also could affect the use of other health care services (such as mental health services), with corresponding fiscal impacts.

***Minor Administrative Costs for Schools, Colleges, and Universities.*** The education-related components of the measure would generate several millions of dollars of administrative costs for schools, colleges, and universities (less than 0.01 percent of annual state funding for schools, colleges, and universities). For example, schools, colleges, and universities would need to revise policy manuals and training materials; obtain approval from the school board and other school groups on the new procedures; inform and train school staff, employees, and contractors of the new procedures; process written parent consent forms for gender-related accommodations; and modify data collection policies and systems to track biological sex as defined by the measure to ensure proper implementation. Additionally, the measure could trigger additional Title IX discrimination complaints and investigations, resulting in an unknown, but likely minor, increase in Title IX workload costs for schools, colleges and universities.

***Potential, but Unknown, Cost Pressure Related to Federal Fiscal Penalties.*** If the measure was implemented and found to violate federal anti-discrimination laws, such as Title IX or Section 1557, the state and local governments may face federal fiscal penalties, such as loss of federal Medicaid and education funds or fines. This could place pressure on state and local governments to backfill lost federal funding. Whether action is taken and the magnitude of such action is unknown, but the impact could be significant.

***Other Potential Cost Pressures.*** The education-related changes in the measure may generate indirect cost pressures for other government-funded programs and services. For example, once notified by the school, parents or legal guardians may seek out counseling or other supportive services for their child. State and local government costs could increase to the extent the supportive services are provided through a government-funded program. Additionally, while not

legally required to do so, schools, colleges, and universities may choose to convert existing sex-segregated facilities into all-gender facilities to allow transgender students to use any and all facilities. The potential magnitude of these cost pressures is unknown.

*Summary of Fiscal Effects.* Assuming the measure could be legally implemented, there would be the following fiscal effects:

- Potentially minor savings in state and local health care costs of up to millions of dollars annually from no longer paying for prohibited services for individuals under the age of 18. These savings could be affected by many other impacts, such as individuals seeking treatment later in life.
- Minor administrative and workload costs to schools, colleges, and universities, up to several millions of dollars initially.
- Potential, but unknown, cost pressures to state and local governments related to federal fiscal penalties if the measure results in federally funded schools, colleges, universities, or health care providers being deemed out of compliance with federal law.

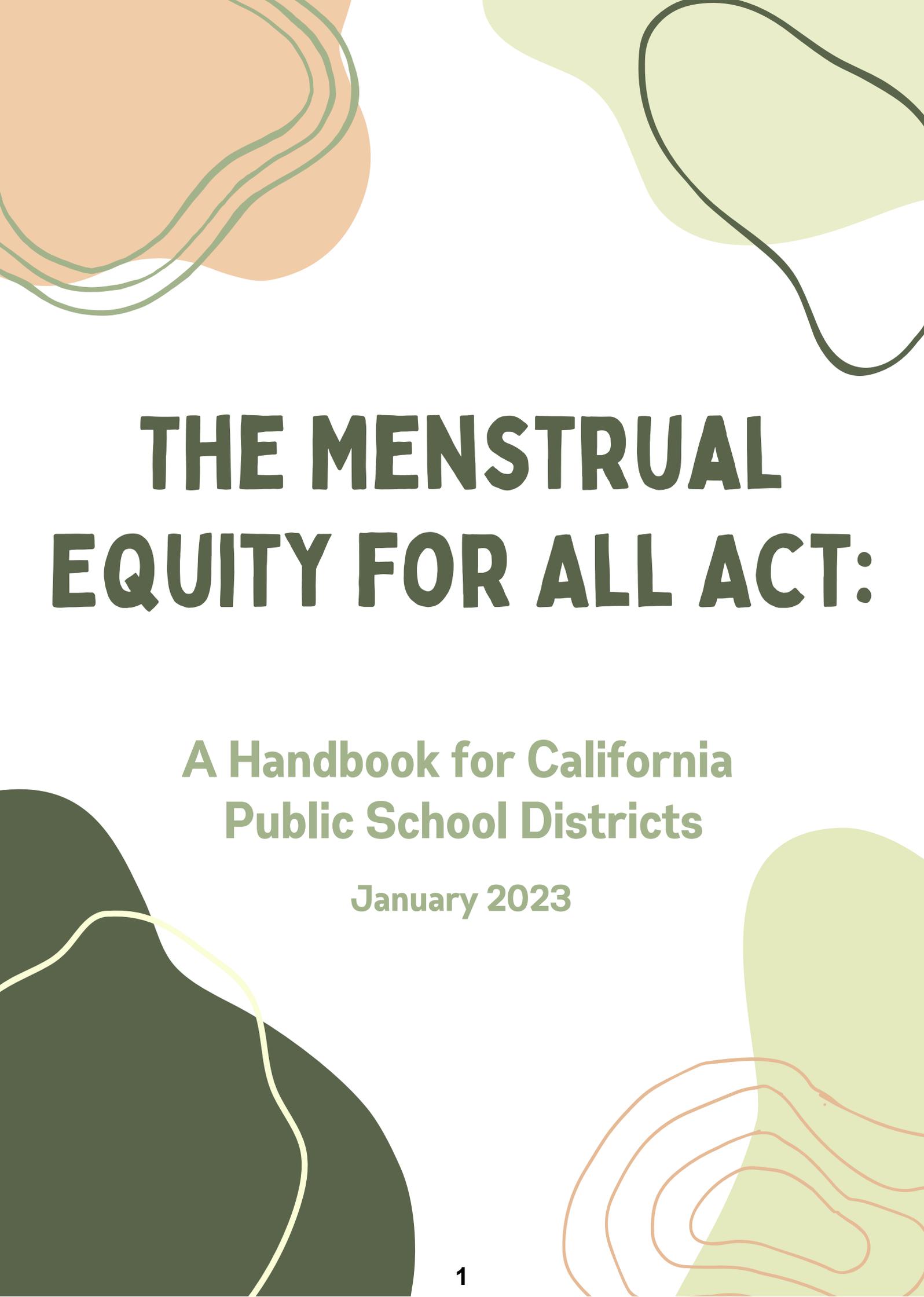
Sincerely,

---

for Gabriel Petek  
Legislative Analyst

---

for Joe Stephenshaw  
Director of Finance



# **THE MENSTRUAL EQUITY FOR ALL ACT:**

**A Handbook for California  
Public School Districts**

**January 2023**

# ACKNOWLEDGEMENTS:

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# I. WELCOME



# I. WELCOME

## Dear Reader,

I am a student who has had to deal with the hardship, pain, embarrassment, and anxiety around having to find menstrual products during school hours. I know firsthand the experience of getting an infection and having to miss several days of school and go to urgent care for antibiotics after having to use toilet paper instead of pads because I couldn't access products at school.

I also know that many students have similar stories. The unexpectedness of periods means they can happen anywhere, at any time, and for students this may take away from class time by having to go to the nurse to ask for products, and sometimes even having to pay.

This is why so many students across California support the Menstrual Equity for All Act of 2021 (AB 367 [[Ch. 664, Stas. 2021](#)]; Cal. Educ. Code § 35292.6), which was signed into law in October 2021. This law requires all public schools serving any grade 6-12 to provide free menstrual products in school bathrooms by the start of the 2022-2023 school year.<sup>1</sup>

Now, we as students need your leadership to implement the California Menstrual Equity for All Act. This is incredibly important for all students because otherwise many of us will keep suffering from the shame, discomfort, and frustration that comes from not having immediate access to these products at school. There should not be shame around periods and the Menstrual Equity for All Act gives us an opportunity to make that a reality.

Making sure the Menstrual Equity for All Act is strongly implemented would not only help students like me and my friends, but also help make sure that all students across California have equal access to education and are encouraged to reach their full potential, no matter their gender or family income. I hope this district handbook helps answer questions on how to get started on achieving the goals of the Menstrual Equity for All Act. On behalf of California's students, thank you for all of your leadership.

**Thank you,  
Kimberly Sockwell  
Youth Liberty  
Squad Student**



<sup>1</sup> Cal. Educ. Code § 35292.6(a).

## Dear Reader,

AB 10 (2017)\* came from three young high school students in Stockton who approached me and were aware of my work to eliminate the sales tax on menstrual products. They said that was good and were appreciative, but also shared with me that they should have free menstrual products in school. Then they shared how they struggled to afford products and how that affected their education. One said she missed school whenever she had no products. One said she used socks with toilet paper and newspapers and one memorized where all the fancy hotels were because they usually had free menstrual products.

These scenarios are simply unacceptable. My work on both AB 10 (2017) and now the Menstrual Equity for All Act (AB 367 of 2021) has expanded access to menstrual products in schools to ensure our students can focus on their education instead of worrying about access to menstrual products. I appreciate the ACLU, CASC, PERIOD and others that helped advocate alongside me to increase menstrual equity in California.

Thank you,  
**Assemblymember Cristina Garcia**  
**58th Assembly District**



*\* Note: In 2017, Assemblymember Garcia introduced AB 10 (Ch. 687, Stats. 2017), a bill that required **Title I schools** serving any grade 6-12, inclusive, to provide free menstrual products for students. This handbook details implementation of the Menstrual Equity for All Act (AB 367 [[Ch. 664, Stats. 2021](#)]), an act introduced by Assemblymember Garcia that expands the requirement to **all public schools**, serving any grade 6-12, inclusive.*

# II. MENSTRUAL EQUITY FOR ALL ACT (AB 367) OVERVIEW



# II. AB 367 OVERVIEW

## What is the Menstrual Equity for All Act?

The Menstrual Equity for All Act (AB 367 [[Ch. 664, Stas. 2021](#)]) recognizes the critical need for expanded access to free menstrual products in California public schools in order to stem the harmful impacts period poverty has on students in the classroom.

The Menstrual Equity for All Act has two main requirements for local educational agencies:

- As of the start of the 2022-2023 school year, all public schools, including schools operated by school districts, county offices of education, and charter schools, serving any grade 6-12, inclusive, must provide free and accessible menstrual products—defined as both pads and tampons—in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom.<sup>2</sup>
- In addition, schools are required to post clear and visible notices letting students know about their right to access free menstrual products. The notice must be posted in all applicable restrooms and include the text of Education Code § 35292.6 as well as contact information, including both a telephone number and email address, for the school personnel responsible for ensuring menstrual products are stocked.<sup>3</sup> A sample restroom notice is provided in the Appendix.

Importantly, many school districts have already begun implementing similar provisions. The Menstrual Equity for All Act builds on previous legislation to ensure that low-income students have adequate access to free menstrual products. Since 2017, California law has required Title I schools serving any grade 6-12, inclusive, to provide free menstrual products for students (AB 10 [[Ch. 687, Stats. 2017](#)]).

The Menstrual Equity for All Act also requires California State University campuses and each community college district to stock an adequate supply of menstrual products in a central location and notify students of this right.<sup>4</sup>

<sup>2</sup> Cal. Educ. Code § 35292.6(a).

<sup>3</sup> Cal. Educ. Code § 35292(c)

<sup>4</sup> Cal. Educ. Code § 66027(a)(1)

All California public schools are legally required to comply with the Menstrual Equity for All Act as of the start of the 2022-2023 school year.

## To which schools does the Menstrual Equity for All Act apply?

All California public schools, including schools operated by a school district or the county office of education, and charter schools serving any grade 6-12, are required to comply with this law. Private schools are not required to provide free menstrual products under the Menstrual Equity for All Act but are encouraged to do so as a best practice.

## Why is the Menstrual Equity for All Act necessary?

This law addresses an unmet need called to attention by students, teachers, administrators, and public health professionals. Research shows that [nearly 1 in 4](#) students struggle to access menstrual products and have missed class because they lacked access to menstrual products.<sup>5</sup> The Menstrual Equity for All Act helps students stay engaged in academic classes and school activities without worrying about the economic challenge of finding or affording menstrual products throughout the school day. The need for menstrual products is no different than the need for toilet paper and soap—all are essential products that people need to be healthy and safe.

This law alleviates the experiences of shame that can accompany a lack of access to menstrual products. Lack of access to menstrual products, often referred to as "period poverty," disproportionately affects students of color and low-income students. The challenges from a lack of access to menstrual products can also disproportionately affect people living with disabilities. Importantly, this law affirms the right to menstrual dignity for transgender, intersex, nonbinary, gender non-conforming, and two spirit students by addressing the needs of students navigating experiences of gender dysphoria during menstruation while minimizing negative attention that could put them at risk of harm. For these reasons, other states have also passed similar legislation, including [Oregon](#).<sup>6</sup>

<sup>5</sup> *State of the Period*, <https://period.org/uploads/State-of-the-Period-2021.pdf>.

<sup>6</sup> *Oregon Department of Education*, "Menstrual Dignity for Students Toolkit," November 2022.

“It is important to me to have menstrual products in my school restrooms because it relieves me of some of the stress that comes with getting my period at school. Instead of worrying about whether I have pads in my backpack, I can focus more on school and my education. Also, students who come from low-income families don't have to worry about being deprived of a basic necessity.

~ Katie, 10th grade

Every school community is different, so the Menstrual Equity for All Act allows local educational agencies to have flexibility in determining which kinds of school personnel are best positioned to oversee implementation in each school site directly. Local educational agencies include school districts, county offices of education, and charters.

As a best practice, it is recommended that local educational agencies begin implementation by updating and adopting relevant school board policies. We have developed a model policy that local educational agencies can use as a resource as they update or develop their own. *(See Appendix, B: Model School Board Policy)* Many local educational agencies in California base their policies off samples from the California School Boards Association (CSBA). The CSBA has included some of the requirements of the Menstrual Equity for All Act in its most recent update to its sample Williams Uniform Complaint Procedures (1312.4) policy. Local educational agencies that partner with CSBA should update their existing policies to reflect such changes, and should consider adopting a policy that also reflects the additional requirements of the Menstrual Equity for All Act. By adopting clear and comprehensive board policies, local educational agencies ensure a strong foundation for implementation efforts going forward.

Once the appropriate policies are updated and adopted, and as reflected in model policy 3517.1 in the Appendix, it is recommended that the Superintendent or the Superintendent's designee then assign an administrator at each school site within the agency serving any grade 6-12 to ensure menstrual products are stocked and adequate notices are posted.<sup>7</sup>

The Menstrual Equity for All Act requires that restroom notices regarding menstrual products provide both an email address and telephone number for the school personnel responsible for ensuring menstrual products are stocked at each school site. As a best practice, local educational agencies should also include in the notice a physical location on campus for students to seek immediate assistance such as the front office or the office of an administrator tasked with overseeing implementation of the Menstrual Equity for All Act.

Regardless, it is critical that the school personnel selected to be responsible for ensuring an adequate supply of menstrual products is someone who is regularly reachable by students and well-equipped to communicate and coordinate with janitorial staff, such as the school's operation manager or office manager.

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<sup>7</sup> Cal. Educ. Code § 35292.6(c).

In cases of poor implementation of the Menstrual Equity for All Act, local educational agencies may receive either a Uniform Complaint Procedure (UCP) Complaint or a Williams Complaint (another type of UCP complaint), depending on the circumstances, and should ensure compliance as needed. The CDE describes the responsibilities of local education agencies in responding to complaints on their [website](#). UCP Complaints are appropriate where discrimination or harassment has occurred, such as where restrooms for only one gender are being consistently stocked with menstrual supplies. Williams Complaints are appropriate where students are not being provided with the bare minimum necessities needed for their health and safety. However, local educational agencies should strive for robust implementation of the Menstrual Equity for All Act not only to comply with California law, but also to improve educational outcomes for menstruating students and create a more welcoming and affirming learning environment.

## What are other important considerations when implementing the Menstrual Equity for All Act?

In passing the Menstrual Equity for All Act, the Legislature stated clearly that their intent was to “provide for the health, dignity, and safety of menstruating students at every socioeconomic level, normalize menstruation among all genders, and foster gender competency in California schools.”<sup>8</sup> As local educational agencies implement the law, they should keep these goals in mind along with the needs of their individual school community. For example, while local educational agencies are only required to provide pads and tampons, they may also choose to provide other types of menstrual products. Some school districts may also choose to provide menstrual products for a broader range of grade levels, as many younger students begin menstruating before they reach 6th grade. Similarly, local educational agencies should also consider stocking menstrual products in more than one men’s restroom on campus. This not only helps to establish full and equitable access to menstrual products to people of all genders who menstruate across campuses, but also can reduce targeting or stigmatizing of any one particular restroom that may provide menstrual products. Overall, it is critical that, as part of their implementation processes, school districts build in opportunity for student input and feedback to ensure all students have access to the menstrual products they need whenever and wherever they need them on campus. *(See VI. Roadmap to Implementing the Menstrual Equity for All Act)*

8. Cal. Educ. Code § 35292.6(c).

“As a trans guy, seeing menstrual products in all school bathrooms would be amazing. Society is so often neglectful and cruel towards trans people; so having menstrual products in every bathroom would make me and all my trans siblings feel much safer and much more respected.

~ Jasper, 10th grade

# III. MENSTRUAL PRODUCTS 101



# III. MENSTRUAL PRODUCTS 101

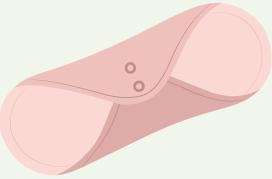
This section provides a summary of considerations to keep in mind as local educational agencies implement the Menstrual Equity for All Act at their individual school sites, including information on what types of menstrual products to provide, what quantity of products to order, how to store and dispose of products, how to make products accessible to all who need them, and language tips for discussing access to menstrual products. It is strongly encouraged that students have an opportunity to weigh in on the types, quality, and storage of products to make them most accessible.

## a. Types of Products

**Both pads and tampons** must be provided pursuant to AB 367. Local educational agencies are encouraged to provide a range of sizes to meet individual's varying menstruation needs.

Product	Definition	Types	Sizes	Examples
Pad	A disposable menstrual product that adheres to underwear & absorbs menstrual fluids.	Liners Day Pads Night Pads	Light Regular Heavy	 [a pad with blue adhesive]
Tampon	A disposable menstrual product that is inserted into the vagina to absorb menstrual fluids.	Plastic Applicator Cardboard Applicator No Applicator	Light Regular Super Super Plus Ultra	 [a tampon without an applicator]

Schools can **go above and beyond** to support the menstrual health of students by providing any of the following products:

Product	Definition	Types	Sizes	Examples
Washable Period Underwear	Underwear that replaces regular underwear, collects menstrual fluids and can be washed, dried, & reused.	High-waisted Bikini Boxer	Light Heavy Sleeper XS - 6X	 [a beige washable period underwear]
Reusable Pads	Reusable pads are made from washable cloth, attach to underwear to absorb menstrual fluids, and can be reused.	Cotton Bamboo	Liners Day Pads Night Pads	 [a beige reusable pad]
Menstrual Cups	A menstrual cup is a flexible cup that is inserted into the vagina to collect menstrual fluids. The cup can be washed and reused.	Tulip-shaped Disc-shaped	Different brands have different size charts	 [a purple menstrual cup]

“ You never know how somebody's life at home is. Maybe they are shamed or embarrassed for having a menstrual cycle. They could possibly be neglected, or they might not have the appropriate resources around them to access menstrual products. No matter a student's background or how they identify, they should feel healthy, safe, and comfortable at school. Having menstrual products in school restrooms makes students feel like they are cared for.

~ Maria, 9th grade

Considerations:

1. Disposable pads and tampons need to be changed at least every **4–6 hours**.
2. Days with heavier menstrual flow will require menstrual products to be **changed more often** and may require larger sized products.
3. The average person who menstruates begins a new menstrual cycle **every 21–40 days**.
4. The average menstrual period lasts **2–7 days**.

**Estimated Usage Per Student, Per Month\*:**

Students	Min. Daily Product	Max. Daily Product	Monthly Range	Yearly Range
1	4	6	8-42	96-504
100	400	600	80-420	960–5,040
1,000	4,000	6,000	8,000-42,000	96,000–504,000
5,000	20,000	30,000	40,000-210,000	480,000–2,520,000

*\*Note: Average number of products used per student per month was based on several pilot programs conducted throughout CA. Average usage may vary depending on the needs of students in a particular school or district.*

**Recommended Purchase Quantity Per Month\*\*:**

School Size	# of Menstrual Products	District Size	# of Menstrual Products
500 or fewer	4,500	5,000	45,000
1,000	9,000	15,000	135,000
2,500	22,500	30,000	270,000
4,000	36,000	60,000	540,000

**\*\*Assumptions:**

- 50% of students at each school menstruate
- Average use of 3 products per student per month
- 180 days or 6 months in 1 school year

Considerations:

1. Menstrual products must be stored in a clean and dry place
2. Not all menstrual products have the same shape and size
3. Menstrual products must be accessible to all students, and some students may have different accessibility needs

Type	Benefits	Drawbacks	Examples
Wall Unit	<ul style="list-style-type: none"> <li>• Attaching the unit to the wall can prevent tampering</li> <li>• School restrooms may already have wall dispensers in place</li> </ul>	<ul style="list-style-type: none"> <li>• Some wall units only work with a specific type and brand of product.</li> <li>• Products may appear to be coin operated, so students may think they cost money.</li> <li>• Units can be expensive to install.</li> <li>• Students may have difficulty getting more than one product at a time when needed.</li> </ul>	 <p>[silver wall unit with two dispensing knobs and a slot for the product]</p>
Basket on Counter	<ul style="list-style-type: none"> <li>• Low cost</li> <li>• Students can easily take the products they need.</li> <li>• Not much space required</li> </ul>	<ul style="list-style-type: none"> <li>• It is easy to remove or tamper with the menstrual products.</li> </ul>	 <p>[wicker basket containing yellow and blue tampons and pads]</p>
Storage Drawer	<ul style="list-style-type: none"> <li>• Less expensive than a wall unit</li> <li>• Can hold a large amount of product at one time</li> <li>• Students can easily take the products they need.</li> </ul>	<ul style="list-style-type: none"> <li>• It is easier to remove or tamper with the menstrual products.</li> </ul>	 <p>[white table with drawers containing menstrual products]</p>

Considerations:

1. Disposable pads and tampons cannot be flushed down the toilet
2. Disposable pads and tampons must be placed in a trash receptacle

Materials	Why They are Necessary	Examples
Trash Receptacle	Each stall should have its own trash receptacle to maintain student privacy and make it easy to properly dispose of menstrual products.	 <p>[silver trash receptacle box]</p>
Receptacle Liners	Liners go inside each trash receptacle for easy and sanitary removal of the trash contents. Lining each receptacle is also an easy way to keep the receptacle clean.	 <p>[brown liner bag]</p>

e. Language

The words we use to describe menstruation, menstrual products, and people who experience menstruation can have a big impact on students. Using gender inclusive language and language that discusses menstruation as a natural occurrence helps create a more welcoming learning environment and helps de-stigmatize menstruation for all students. For example:

Instead of...	Say...
Girls	Students; Teens; People who menstruate
Menstrual hygiene	Menstrual health
Feminine hygiene products	Menstrual products

Considerations for local education agencies:

- **People of different genders menstruate.** Although the law only requires menstrual products to be included in one men’s restroom, providing menstrual products in all men’s restrooms in addition to all women’s and all gender restrooms increases menstrual product accessibility for transgender men, nonbinary people, and intersex people who may use the men’s restroom. Further, providing products in all bathrooms may *reduce targeting or stigmatizing* of any one particular restroom that may provide menstrual products.
- **Many younger students begin menstruating at lower grade levels,** well before 6th grade. Although the law only requires menstrual products to be provided in schools serving any grade 6-12, providing menstrual products in schools serving *lower grade levels ensures all menstruating students feel supported.*
- When installing menstrual product storage containers, local educational agencies should **ensure they are ADA compliant.** Menstrual products must be *accessible by people with different abilities*, including at a height accessible by students in wheelchairs.
- **Some people may feel stressed, embarrassed, ashamed, or even afraid** of taking menstrual products in front of others. For some, being seen accessing menstrual products can risk outing them and lead to uncomfortable questions about a person’s gender or their circumstances (e.g., a student experiencing homelessness) and put them at risk of harm. For these reasons, it is important for menstrual products to be easily and quickly accessible. Providing small brown paper bags to put products inside may also help students *access products more discreetly and comfortably.*
- **Signs must be posted in restrooms** to notify students of their rights in regards to the California Menstrual Equity for All Act.<sup>9</sup> These signs should be in large, legible text to be visible to all. *(See Appendix, C: Sample Restroom Notice)*

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9. Cal. Educ. Code § 35292.6(c).

“Menstrual equity, to me, means that menstruation is treated just as any other health care issue should be treated; with respect and support. It's a health care issue - the same as supplying soap or toilet paper. Having [menstrual] supplies should not be a luxury. It should be right that everyone - no matter the situation - has.

~ Nora, 8th grade

# IV. FUNDING AND REIMBURSEMENTS



# IV. FUNDING & REIMBURSEMENTS

Costs associated with the Menstrual Equity for All Act are reimbursable as determined by the California Commission on State Mandates, as discussed in further detail below. In addition to seeking direct reimbursement from the state to implement the mandate, districts may also pursue a number of funding and partnership opportunities to support meeting or expanding upon the law’s requirements.

## a. Reimbursable State Mandate

The [California Commission on State Mandates](#) has previously determined that requirements to offer menstrual products free of charge in public school restrooms constitute a reimbursable state mandate.<sup>10</sup> Because these requirements have not yet been incorporated into the mandates block grant, school districts will need to file separate, annual claims to the State Controller’s Office for reimbursement of costs.

For more information about state-mandated programs and costs, visit:

[https://www.sco.ca.gov/ard\\_mancost.html](https://www.sco.ca.gov/ard_mancost.html)

## b. Local Control Funding Formula

School districts should consider directing supplemental and concentration grants from their Local Control Funding Formula (LCFF) towards implementation of the Menstrual Equity for All Act. These funds could be used to expand the provision of menstrual products beyond the mandate, for example, to all restrooms or nurses’ offices or to include other menstrual products such as menstrual cups or reusable pads.

Under the LCFF formula, school district funding is primarily comprised of three grants:

- **Base Grant:** Based on grade span of pupils and average daily attendance
- **Supplemental Grant:** Equal to 20% of the adjusted base grant multiplied by ADA and the unduplicated percentage of targeted disadvantaged pupils—defined as English learners, students that meet income requirements to receive a free or reduced-price meal, and youth in foster care

10. This decision was rendered in the context of AB 10 (Ch. 687, Stats. 2017), a more limited mandate that applied only to schools that met the 40% pupil poverty threshold required to operate a Title I program. While it is likely that the California Commission on State Mandates will have to issue a new or updated decision to reflect the expanded scope of the 2021 Menstrual Equity for All Act, districts can seek retroactive funding after a decision has been issued and thus need not wait for such a decision in order to begin complying with the new law, which goes into effect at the start of the 2022-2023 school year.

- **Concentration Grant:** Equal to 65% of the adjusted base grant multiplied by ADA and the percentage of targeted pupils exceeding 55% of a school district's or charter school's enrollment

For more information on LCFF, visit: <https://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp>

Inadequate access to menstrual products impacts all students, but falls the hardest on students that are low-income or who otherwise consistently lack access to support or care, such as those in foster care. Schools can make a strong argument in their Local Control and Accountability Plan (LCAP) to justify the allocation of supplemental and concentration grant funds to develop a robust menstrual equity program that expands the provision of products beyond the baseline requirements of the Menstrual Equity for All Act.

### c. Public Partnerships

City and county agencies can be strong partners in supporting menstrual equity in schools. Even before the Menstrual Equity for All Act was passed, local governments were key innovators in addressing period poverty. In March 2021, for example, [Santa Clara County](#) approved a measure to stock at least half of all public restrooms in the county, including in schools, with menstrual products. Previously, Santa Clara County also allocated \$1 million to support the distribution of menstrual products to hubs of support for disadvantaged community members, including through school-based food programs. [San Diego County](#) similarly approved the installation of cost-free menstrual product dispensers in county-run facilities across the region.

Reach out to your local county board of supervisors, city council, or public health department to explore collaboration opportunities.

### d. Private Partnerships

A number of schools that already provide products to students free of charge have done so in partnership with private agencies or vendors that offer products as well as technical assistance for implementation, sometimes on a sliding scale. Your procurement staff may have existing relationships with vendors or vendor networks that may be able to provide more information.

“To me, menstrual equity means that menstruators, no matter their race, socio-economic status, sexuality, or gender can afford and access safe menstrual products.

~ Gia, 11th grade

# V. ENGAGING YOUR SCHOOL COMMUNITY



# V. ENGAGING YOUR SCHOOL COMMUNITY

It is important to engage school communities throughout the Menstrual Equity for All Act implementation process in order to ensure a smooth and successful free menstrual product program. By including various school community stakeholders throughout the process, school districts are more likely to have a well-supported and inclusive free menstrual product program that meets the specific needs of the community.

Below are various strategy recommendations and considerations for engaging students, parents, and school staff throughout the implementation process. *(See Also Appendix, F. Case Studies)*

## a. Engaging with the Students

Student engagement is a critical component to successfully implementing the Menstrual Equity for All Act in schools. There are many steps schools can take both before and during implementation in order to ensure that their free menstrual products program both meets students' needs and fosters healthy conversations around menstruation and reducing related stigma. For example:

- Prior to implementation: Invite students to provide input and feedback on the development of a school board policy and administrative regulation about the distribution of menstrual products by:
  - Encouraging student leaders to facilitate town halls and/or community forums.
  - Engaging with student groups, including menstrual equity clubs, on campus.
  - Inform students about this new opportunity during school announcements, in school bulletins, and in any visual announcements via email / advisory.
  - Convene a workgroup or committee that includes students, custodial staff, health education teachers, and others to develop recommendations for implementing the menstrual products program.

*The more a school administration speaks about menstruation and menstrual equity, the less stigmatized these topics become, and schools may have less of an issue with implementation and abuse of products from the start.*

- During implementation:
  - Provide education to students about menstruation and menstrual products by collaborating with students to develop a peer education campaign through social media, promotional artwork, and materials that notify fellow students about free products on campus, how to use them, and why they are important.
  - Create opportunities for students to provide feedback on implementation and potential improvements by:
    - Create and share a “living” survey that students may respond to at any time and as frequently as they need.
    - Watching for trends in survey results over time will help with long-term implementation goals and increase awareness of student needs.
    - Utilize anonymous question boxes using digital tools like Padlet, Mentimeter or Google forms.

## b. Engaging with Parents, Guardians, and Families

Parents, guardians, and families are important allies in supporting students while implementing the Menstrual Equity for All Act. Engaging parents, guardians, and families early on can help facilitate healthy, honest, and open conversations at home in addition to at school. For example:

- Prior to Implementation: Share with parents about the free menstrual products program to be implemented and create opportunities to provide information and answer questions:
  - Collaborate with community-based organizations on community outreach and education.
  - Reiterate the impact of period poverty and the positive academic and personal outcomes that students have with consistent access to menstrual products.
  - Offer accessible literature and signage in more than one language to reduce barriers for engagement for non-English speaking families or families with disabilities.
  - Create space to listen to concerns while centering the needs of student health and dignity.
- During Implementation:
  - During communications with parents about mandated comprehensive sexual health education,<sup>11</sup> provide information about how the school’s curriculum addresses menstrual health.

11. Districts are required to provide comprehensive sexual health and HIV prevention education to all California students at least once in middle school and once in high school. See California Healthy Youth Act, Cal. Educ. Code 51930-51939, available at [https://leginfo.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=EDC&division=4.&title=2.&part=28.&chapter=5.6.&article=](https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=EDC&division=4.&title=2.&part=28.&chapter=5.6.&article=) For more information about the California Healthy Youth Act, visit <https://www.cde.ca.gov/ls/he/se/>.

- Provide families with talking points, tips and guidance on how to have conversations with students of all genders about menstrual products and access.
- Emphasize the importance of ensuring access to menstrual products free of misinformation and stigma and encourage conversations with families to be accurate, honest, and open.

### c. Engaging with Staff

Ensuring staff are aware of and engaged in the implementation process of the Menstrual Equity for All Act is also critical for a successful program. There should be many opportunities for staff to engage with the development of a menstrual products program. For example:

- Prior to Implementation:
  - Notify school personnel about the Menstrual Equity for All Act. (*See Appendix, A: Menstrual Equity for All Factsheet*)
  - Clearly identify responsible school personnel at each school site and outline their responsibilities.
  - Convene a workgroup or committee that includes health education teachers, custodial staff, students, and others to develop recommendations for implementing the free menstrual products program.
- During Implementation:
  - Ensure all staff are notified and trained pursuant to relevant board policy updates.
  - Engage staff of all levels via training on how to:
    - Engage with questions or concerns about menstrual health or implementation of the Menstrual Equity for All Act from students and parents and guardians, including using gender-affirming and menstruation-positive language.
    - Ensure the safety and dignity of trans, nonbinary, gender-nonconforming students and students of any, all, and no gender when accessing menstrual products, including by not making assumptions about which students may require access to menstrual products.
    - Support students in taking as many products as they need and to avoid the scarcity mindset.
    - Ensure that students have restroom access at all times, without stigma or fear of discipline for using the restroom or leaving the classroom. As a best practice, staff should not implement policies that prohibit or limit bathroom usage, nor incentivize withholding bathroom privileges.

- De-escalate, mitigate or eliminate bullying or harassment amongst students, especially in the restroom setting.
- Integrate menstruation education as part of regular school curriculum, including in mandated comprehensive sexual health education.



Some students cannot afford menstrual products and have to use something else that's not for the use of menstruating like toilet paper. That can lead to serious health issues so I'm glad this law protects me and my peers now.

~ Leila, 9th grade

# VI. ROADMAP TO IMPLEMENT THE MENSTRUAL EQUITY FOR ALL ACT



# VI. IMPLEMENTATION ROADMAP



# VII. APPENDIX



# A. CA MENSTRUAL EQUITY FOR ALL (AB 367) FACT SHEET

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On October 8, 2021, Governor Newsom signed the Menstrual Equity for All Act (AB 367 ([Ch. 664, Stas. 2021], Cal. Ed. Code § 35292.6) into law requiring public schools and universities to provide menstrual products for students free of charge. A previous law, AB 10 (Ch. 687, Stats. 2017), already required Title I schools to provide free menstrual products in at least 50% of all restrooms.

## Background

Period poverty affects individuals of all ages. In California, [1 in 6 women](#) live below the Federal Poverty Line.<sup>1</sup> A [2021 study](#) found that 65% of students surveyed did not want to be at school while on their period, and that 83% of students surveyed reported hiding their menstrual products when leaving the class to go to the restroom.<sup>2</sup> Another study showed that 86% of adults who menstruate have started their period unexpectedly in public without the supplies they needed, 79% reported needing to improvise tampons or pads out of toilet paper or other materials because no menstrual products were available, and 34% had to go home immediately to get menstrual products.<sup>3</sup> Such disruptions cost considerable time and resources, which can be particularly burdensome for young people who are low-income or unhoused.

Lack of access to menstrual products can risk physical and emotional health, and disproportionately impacts women and girls, transgender men and boys, and non-binary people. Access to menstrual products is a necessity, not a luxury, and should be guaranteed for the health, safety, and dignity of all Californians.

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1 California State Fact Sheet on Period Poverty, [https://38u47v28brxp33ykdt1i8rvd-wpengine.netdna-ssl.com/wp-content/uploads/2021/12/California\\_APS\\_Period\\_Poverty\\_Fact\\_Sheet\\_051021.pdf](https://38u47v28brxp33ykdt1i8rvd-wpengine.netdna-ssl.com/wp-content/uploads/2021/12/California_APS_Period_Poverty_Fact_Sheet_051021.pdf).

2. State of the Period, <https://period.org/uploads/State-of-the-Period-2021.pdf>.

3. Free the Tampons Foundation, *The Murphy's Law of Menstruation*, [https://www.freethetampons.org/uploads/4/6/0/3/46036337/ftt\\_infographic.pdf](https://www.freethetampons.org/uploads/4/6/0/3/46036337/ftt_infographic.pdf).

## Requirements

On or before the start of the 2022–23 school year, **California public schools**—defined as all schools operated by a school district, county office of education, or charter school—maintaining any combination of classes from grades 6 to 12, inclusive, must:

- Stock an adequate and accessible supply of menstrual products—defined as menstrual pads and tampons—free of cost and at all times in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom; <sup>4</sup>
- Post a notice in each restroom advising students of the availability of menstrual products free of charge and providing contact information for an individual designated to ensure restrooms are stocked. <sup>5</sup>

Further, starting on January 1, 2022, the **California State University and each community college district** must:

- Stock an adequate and accessible supply of menstrual products free of cost, at no fewer than one designated and accessible central location on each campus, such as a student center, library, wellness or health center, pantry, or study room; <sup>6</sup>
- A location’s accessibility shall be determined by considering at least the following factors:
  - Hours of operation, relative to hours that students are on campus;
  - Proximity to high-traffic areas on campus;
  - Accessibility by students of all genders and regardless of physical ability;
  - Privacy, including whether accessing products would require interaction with staff or other students; and
  - Safety. <sup>7</sup>
- Post a notice advising students of the availability of menstrual products free of charge in a prominent and conspicuous location in all women’s restrooms and all-gender restrooms and in at least one men’s restroom. <sup>8</sup>

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<sup>4</sup> Cal. Educ. Code § 35292.6(a).

<sup>5</sup> Cal. Educ. Code § 35292.6(c).

<sup>6</sup> Cal. Educ. Code § 66027.7(a)(1).

<sup>7</sup> Cal. Educ. Code § 66027.7(a)(2).

<sup>8</sup> Cal. Educ. Code § 66027.7(b).

# B. MODEL BOARD POLICY

[Suggested numbering within CSBA sample policies: *BP 3517.1*]

## Free Menstrual Products

California law requires that any public school serving any of grades 6-12, inclusive, provide free menstrual products in all women's restrooms and all-gender restrooms, and in at least one men's restroom.

The District recognizes that access to menstrual products is vital to ensuring the health, dignity, and full participation of all students and staff. The District also recognizes that people of different gender identities menstruate, including cisgender girls, transgender boys and men, nonbinary people, and gender-nonconforming people. The District has an interest in promoting gender equity and creating a supportive and inclusive learning environment. By providing free menstrual products as required by state law, the District seeks to further de-stigmatize menstruation and advance equitable educational access.

School sites are strongly encouraged to stock menstrual products in all restrooms on campus, including all men's restrooms. At a minimum, any site serving any combination of classes from grades 6-12, inclusive, shall stock all women's restrooms and all-gender restrooms, and in at least one men's restroom with an adequate supply of menstrual products. The menstrual products shall be accessible and available at no cost, and the restrooms should be accessible during operating hours or whenever students are present. Menstrual products provided shall include, but are not limited to pads and tampons.

Any school site maintaining any combination of classes from grades 6-12, inclusive, shall also post a notice in a prominent and conspicuous location in every restroom required to stock menstrual products pursuant to this policy. The notice shall include the text of Education Code 35292.6 and contact information, including, but not limited to, both an email address and telephone number, of the designated individual responsible for maintaining the requisite supply of menstrual products on campus.

The Superintendent or designee shall ensure an administrator is assigned at each school site within the District serving any grade 6-12, inclusive, to ensure menstrual products are stocked and notices are posted in accordance with this policy.

California law further requires that all single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency shall be identified as all-gender toilet facilities pursuant to Health and Safety Code Section 118600. Accordingly, all single-user toilet facilities within the District's campuses and buildings shall be designated all-gender toilet facilities and stocked with menstrual products in accordance with this policy.

**Policy**

**Adopted:** \_\_\_\_\_

**Revised:** \_\_\_\_\_

**[DISTRICT]**

**[LOCATION]**

**Legal Reference:**

**EDUCATION CODE**

**200 ET SEQ**

**35292.6 (AB 367 of 2021)**

**HEALTH & SAFETY CODE**

**118600 (AB 1732 of 2016)**

# C. SAMPLE RESTROOM NOTICE

## Did You Know? CA Schools Must Provide Free Menstrual Products

### Menstrual products are a basic necessity, please take what you need!

- Schools serving any grade between 6-12 must provide free and accessible pads & tampons in every women’s restroom, every all-gender restroom, and at least one men’s restroom on campus.
- These products can be used by anyone, including women, girls, transgender men, nonbinary, and gender-nonconforming people who menstruate.
- If this restroom needs more menstrual products, or if you have questions, please contact [NAME], [TITLE] at [EMAIL] or [PHONE] or [CAMPUS OFFICE].

**This notice is posted according to Education Code 35292.6 and must be posted where everyone can see it and in every restroom requiring free menstrual products.**

### Education Code 35292.6.

*(a) On or before the start of the 2022–23 school year, a public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, shall stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom.*

*(b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils.*

*(c) A public school described in subdivision (a) shall post a notice regarding the requirements of this section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost, pursuant to this section. This notice shall include the text of this section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.*

*(d) For purposes of this section, “menstrual products” means menstrual pads and tampons for use in connection with the menstrual cycle.*

*(e) This section shall become operative on July 1, 2022.*

# D. SAMPLE MENSTRUAL EQUITY FOR ALL ACT STUDENT FEEDBACK SURVEY

California law requires school districts to provide free menstrual products in schools serving any grade between 6-12. This questionnaire is a tool for your school to learn more about how it can improve its free menstrual product program.

**PLEASE CIRCLE YOUR ANSWERS, and, if you feel comfortable,<sup>1</sup> please explain your answers where you can.**

1. Did you know that students have the right to access free menstrual products at school?

Yes    No    Explain (optional):

2. Did your school post notices in the restrooms about your right to access free menstrual products? If yes and you feel comfortable, please share how the notices can be improved under “explain.”

Yes    No    Explain (optional):

3. Have you ever used the free menstrual products at your school?

Yes    No    Explain (optional):

4. Do you feel comfortable accessing and using the free menstrual products at school when you need them?

Yes    No    Explain (optional):

5. Have you missed school because you didn't have menstrual products?

Yes    No    Explain (optional):

<sup>1</sup> Districts are strongly encouraged to provide an anonymous survey option so that students feel comfortable providing honest feedback regarding their experiences accessing free menstrual products. Easily accessible online mobile surveys are also strongly recommended to maximize participation.

1. I feel safe using school bathrooms.

Agree Disagree Explain (optional):

2. I am less worried because I have access to free menstrual products at school.

Agree Disagree Explain (optional):

3. I am happy with the quality of free menstrual products provided by the school.

Agree Disagree Explain (optional):

4. There is an adequate supply of free menstrual products at school.

Agree Disagree Explain (optional):

5. Free menstrual products can be found in safe, private, and convenient places in the school.

Agree Disagree Explain (optional):

**Tell us more:** If you have any suggestions on how your school can do a better job providing you free menstrual products, please share them here:

# E. FREQUENTLY ASKED QUESTIONS (FAQS)

## Which restrooms must have free menstrual products? What about staff restrooms?

In particular, the Menstrual Equity for All Act states that schools serving any grade 6-12, inclusive, “shall stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all gender restrooms, and in at least one men’s restroom.” In California, as of 2017, “single-user” restrooms should be designated “all gender” restrooms and therefore also be stocked at all times with free menstrual products. The Act does not distinguish between staff and student restrooms.

## What kinds of menstrual products must be provided?

The Menstrual Equity for All Act specifically requires that both pads and tampons are provided, however, local educational agencies may provide other additional types of menstrual products if they wish. Local educational agencies should also ensure a range of menstrual product sizes are available to meet students’ varying menstrual needs.

## We are experiencing vandalism and theft with our menstrual products. What can we do?

Engaging and educating students about the Menstrual Equity for All Act prior to and during implementation is critical to helping students understand why it is important to stock menstrual products in restrooms and reduce abuse. Allowing time for students to adjust is also critical. *(See Appendix, F: Case Studies)*

## Students are using the dispensers to hide contraband, how can we stop this?

This handbook includes a wide variety of options to supply menstrual products, including different menstrual product dispensers. *(See III. Menstrual Products 101)* Schools may want to consider different types of dispensers for different grade levels, as needed, as well as more secure or tamper-proof types of dispensers to ensure products and/or their dispensers are not abused. It is also strongly encouraged that schools engage their students early in the decision-making process for implementing the Menstrual Equity for All Act and give students time to adjust to the new products.

## Who do we contact if dispensers break? How is this funded?

Dispenser maintenance for free menstrual products in school restrooms should be included in general maintenance cost estimates for schools. Schools may be eligible for funding reimbursements. *(See IV. Funding and Reimbursements)*

## What kind of complaint can be filed if a school fails to implement the Menstrual Equity for All Act?

If a local educational agency fails to implement the Menstrual Equity for All Act, it may receive a Uniform Complaint Procedure (UCP) Complaint or a Williams Complaint (another type of UCP Complaint) for such a violation depending on the circumstances of the implementation. More information about UCP complaint procedures is available at:

<https://www.cde.ca.gov/re/cp/uc/>.

## Can schools teach students about menstruation?

Yes. In California, the California Healthy Youth Act (CHYA) (Education Code Sections 51930-51939) requires public schools, including charters, to provide comprehensive sexual health and HIV prevention education at least once in middle school and at least once in high school. Menstruation is a key part of comprehensive sexual health education and critical for all students to learn about in order to reduce stigma. Schools may also wish to include information about menstruation in classes relating to growth and development in lower grades and are permitted to do so under CHYA. Sexual health education in all grades must be age-appropriate, medically accurate, and inclusive of students of all backgrounds, including of all races, genders, sexual orientations, and/or disabilities.

Prior to teaching about growth and development topics or sexual health education, local educational agencies must first provide parent notification at the start of the school year. Parents and guardians must have the opportunity to opt their child out of such education if they wish.

## Where can I find more resources around menstrual health?

- Amaze.org: <https://amaze.org/>
- California Health Education: <https://californiahealtheducation.org/>
- PERIOD Education Resources: <https://period-action.org/education>

# F. CASE STUDIES

## Public K-12 District

**District Name:** Conejo Valley Unified School District

**District Location:** Thousand Oaks, CA

**District Enrollment:** 17,397

**% of Students enrolled in free/reduced lunch:** 26%

In the Conejo Valley Unified School District, students throughout the district advocated for menstrual products in restrooms, which resulted in the district creating a survey to collect information to evaluate student access to menstrual products. Over 30% of the 500 high school students surveyed said that they did not feel that they had adequate access to menstrual products. In response to the survey results, the district began making plans to place menstrual products free of charge in all restrooms on campus. This was a decision that would go above and beyond existing law at the time, AB 10, which only required that all schools receiving Title I funds provide menstrual products in 50% of all restrooms.

The district's first step was to attend trade shows to assess different vendors, specifically for cost and quality of machines and products. The district eventually purchased supplies in dispensers from Waxie\*—a decision based in part on the district's existing relationship with the company for other restroom supplies. The cost came out to be \$280.23 for each machine and the product costs for tampons were \$63.26 (500 per case) and pads were \$28.09 (250 per case).

The maintenance team installed the machines at all Conejo Valley Unified middle and high schools. Every two hours during the school day, the custodians checked the restrooms and filled the machines as needed. At first, there were a number of incidents involving student misuse and abuse of products, such as sticking them on mirrors or throwing them around campus, but after the initial novelty of the products wore off, the number of such incidents declined significantly.

*\*Disclaimer: Reference to a vendor name does not constitute an endorsement but is provided for informational purposes only.*

## Public Charter School

**School Name:** Camino Nuevo Charter Academy, Miramar Campus

**School Location:** Los Angeles, CA

**Student Enrollment:** ~300

**% of Students enrolled in free/reduced lunch:** 99%

This public charter high school in downtown Los Angeles implemented free menstrual products in their school restrooms before AB 367 came into effect, following the AB 10 mandate from 2017. School administrators viewed their student's mental, emotional and physical needs as a precursor to them being able to truly be engaged as learners.

### **Where and how did this school offer menstrual products?**

Menstrual product dispensers were offered with mechanical wall dispensers in all girls restrooms, and the main office also had small cloth bags with a few products available for anyone who needed more. The school's food pantry, which was stocked with nonperishable foods, clothes, and hygiene products, also included menstrual products for students or families to have as an additional resource.

### **How did this school talk about this resource with the school community?**

In addition to merely providing menstrual products as a resource, the school also prioritized normalizing menstruation within its school community.

School administrators partnered with student leaders and staff to talk about the basic essential items offered on their campus, including menstrual products. They worked with their student council to lead by example and utilize the school's resources to normalize and reduce the stigma that can be associated with using the school's basic needs resources.

The school also continuously announced the availability of menstrual products during Advisory school-wide announcements, and created notices and small posters for teachers to place in their classrooms if they chose to. The more normalized menstruation and resources became, the less stigma, vandalism or abuse there was around the supplies.

**What products did they offer, and how were they funded?**

The school already had a contract with Waxie, which is how they purchased other hygiene supplies. The funds to purchase menstrual products came from the Custodial Supplies Budget. Each year the campus actually had a surplus of menstrual products, as they were always able to supply more than was being used by students.

**Who was responsible for ensuring menstrual products were stocked in the restrooms?**

The school's Senior Operations Manager was responsible for purchasing the products, as they were responsible for purchasing other essential products for the campus like toilet paper and soap. The school's custodial staff were responsible for stocking the menstrual products in the restroom, as they would restock for toilet paper and soap. The Senior Operations Manager relied on the feedback by the school's custodian staff to help determine how to adjust the budget for the following year for the use of all hygiene supplies, including paper towels, toilet paper, soap, and menstrual products.