



September 11, 2019

Mr. Arthur Palkowitz  
Artiano Shinoff  
2488 Historic Decatur Road, Suite 200  
San Diego, CA 92106

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: Proposed 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:

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

### **Hearing**

This matter is set for hearing on **Friday, September 27, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California.

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. Staff will no longer send reminder emails because the Commission does not have the resources to contact each party and interested party. Therefore, the last communication from Commission Staff is this Proposed Decision and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

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

### **Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

Heather Halsey  
Executive Director

## ITEM 7

### PROPOSED DECISION AND PARAMETERS AND GUIDELINES

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

The period of reimbursement begins January 1, 2018.

Desert Sands Unified School District, Claimant

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#### EXECUTIVE SUMMARY

##### 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 Decision approving the Test Claim.<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 substantive 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 substantive 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 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>

## **III. Discussion**

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

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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.

<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.

Commission staff proposes to clarify Section II. of the Parameters and Guidelines addressing “Eligible Claimants” as follows:

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)**

Because the test claim statute, Statutes 2017, chapter 687, became effective on January 1, 2018, the period of reimbursement begins January 1, 2018.

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

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.<sup>13</sup> Interested person, Reynolds Consulting Group, Inc., also urges the Commission to state the reimbursable activity as “[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>14</sup>

These requests are not consistent with the test claim statute, and are denied.

2. Section IV. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity and the number of restrooms in each of these schools in order to support the actual costs incurred for labor and materials.

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<sup>13</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>14</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

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.<sup>15</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.<sup>16</sup> Thus, the claimant's proposal to add the same information in Section IV. of the Parameters and Guidelines is not necessary.

During the test claim proceedings, and again in comments on the Draft Expedited Parameters and Guidelines, Finance has 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>17</sup> and that "the required costs may be overstated in the test claim."<sup>18</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable.<sup>19</sup>

Staff agrees 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 and the number of restrooms in each of these schools in order to show the relationship between the reimbursable activity and the costs claimed. 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 and how many pupils are enrolled in the school, which can provide valuable information about the reasonableness of the costs claims. Therefore, Section IV. of the Parameters and Guidelines is revised to reflect this clarification as follows:

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 and the number of restrooms in each of these schools.

***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>15</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>16</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>17</sup> Exhibit L, 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>18</sup> Exhibit L, Finance's Comments on the Test Claim, page 2.

<sup>19</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

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>20</sup>

Although the Controller has allowed time studies in limited circumstances under the Controller’s audit authority,<sup>21</sup> the Government Code does not provide the Commission any authority to authorize reimbursement for actual costs based on a time study and, thus, the request is denied. The Government Code only provides two methods of reimbursement: actual cost claiming, and claiming based on a proposed reasonable reimbursement methodology (RRM).<sup>22</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>23</sup> The Commission, however, is not authorized to develop an RRM,<sup>24</sup> and the parties have not filed a request to adopt an RRM in this case.

4. The proposed activities to purchase and install dispensers for feminine hygiene products are not supported by substantial evidence in the record explaining why the activities are reasonably necessary to comply with the mandate and are, therefore, denied.

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>25</sup> Here, the claimant has asserted and provided evidence of costs and pointed to legislative intent in legislative analyses, but has not provided any evidence to show why reimbursement for the cost of dispensers and any repairs/replacements of dispensers is necessary for the performance of the state-mandated activity.

The claimant requests that the Commission approve “purchasing and installation of dispensers” as reasonably necessary to comply with the mandate.<sup>26</sup> Interested person, Reynolds Consulting

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<sup>20</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>21</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>22</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>23</sup> Government Code, section 17518.5.

<sup>24</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

<sup>25</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).

<sup>26</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost of dispensers and any repairs/replacements of dispensers.<sup>27</sup>

Although the claimant has asserted costs and provided evidence of costs and pointed to legislative analyses to show legislative intent, neither the claimant or the interested person have provided any evidence explaining why the proposed activities of purchasing and installing dispensers are reasonably necessary to comply with the mandate and, thus, the requests are denied.

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.

Any proposed reasonably necessary activity must be supported by substantial evidence in the record showing that proposed activity is necessary for the performance of the state-mandated activity.<sup>28</sup> 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>29</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objected to the exclusion of costs for development of a school's policies and procedures but again did not file any evidence to show why the proposed activity is necessary for the performance of the state-mandated activity.<sup>30</sup>

This activity is denied because the claimant has not provided substantial evidence in the record to support a finding that developing policies and procedures is reasonably necessary to comply with the mandate.

#### **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, and contracted services. However, fixed assets are not included in the Parameters and Guidelines because purchasing and installing dispensers are not mandated by the test claim statute and there is no evidence that these activities are reasonably necessary to comply with the mandate. Moreover, the claimant has identified no other fixed assets required to comply with the mandate. In addition, travel and training costs are not included in the 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.

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<sup>27</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>28</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>29</sup> Exhibit L, Test Claim, pages 11, 21. See also Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>30</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

**IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning January 1, 2018.

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



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 September 27, 2019)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on September 27, 2019. [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 count will be in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

## **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>31</sup> On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>32</sup> On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)<sup>33</sup> filed comments on the Draft Expedited Parameters and Guidelines.<sup>34</sup> On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>35</sup> On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.<sup>36</sup> On June 18, 2019, the Department of Finance (Finance) filed late comments on the Draft Expedited Parameters and Guidelines.<sup>37</sup> On June 19, 2019, the claimant filed rebuttal

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<sup>31</sup> Exhibit A, Test Claim Decision.

<sup>32</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>33</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>34</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

<sup>35</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>36</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>37</sup> Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

comments.<sup>38</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 without being certified and signed under penalty of perjury.<sup>39</sup> On June 26, 2019, the claimant filed rebuttal comments.<sup>40</sup> On July 17, 2019, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.<sup>41</sup> On August 1, 2019, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines.<sup>42</sup>

### **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>43</sup>

The claimant proposes the following amendments to Section IV. of the Proposed Parameters and Guidelines describing reimbursable activities (with amendments in bold italics):

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>44</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>45</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>46</sup>

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<sup>38</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>39</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>40</sup> Exhibit I, Claimant's Rebuttal Comments.

<sup>41</sup> Exhibit J, Draft Proposed Decision and Parameters and Guidelines.

<sup>42</sup> Exhibit K, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

<sup>43</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>44</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>45</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>46</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 L, Test Claim, pages 11-12.) The Commission's Test Claim Decision

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>47</sup> The claimant requests that the comments be stricken from the record.<sup>48</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>49</sup>

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

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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>47</sup> Exhibit G, Claimant’s Rebuttal Comments, page 1.

<sup>48</sup> Exhibit G, Claimant’s Rebuttal Comments, page 1.

<sup>49</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. 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.).

the reimbursement of the dispenser costs at the Commission hearing when the test claim was approved.”<sup>50,51</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>52</sup> The Controller did not comment on the Draft Proposed Decision and Parameters and Guidelines.

### **C. Department of Finance**

Finance filed late comments on the Draft Expedited Parameters and Guidelines expressing several concerns and proposing a change.<sup>53</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>54</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>55</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>56</sup>

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<sup>50</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 L, CSM Public Hearing (May 24, 2019), transcript of proceedings, pages 18-21.

<sup>51</sup> Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

<sup>52</sup> Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>53</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>54</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>55</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>56</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>57</sup>

Finance did not comment on the 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>58</sup>

No comments have been filed by the Reynolds Consulting Group, Inc., on the 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 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,

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<sup>57</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>58</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

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>59</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>60</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>61</sup> or be a participating Title I, Part A school,<sup>62</sup> *and*
- 2) Meet the second test identified in section 6314(a)(1)(A),<sup>63</sup> requiring that not less than 40 percent of the children enrolled in the school are from low-income families.<sup>64</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>65</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, 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

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<sup>59</sup> Exhibit A, Test Claim Decision, page 21.

<sup>60</sup> Education Code section 35292.6(a).

<sup>61</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>62</sup> See 20 United States Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(i).

<sup>63</sup> See also, 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(B).

<sup>64</sup> Exhibit A, Test Claim Decision, pages 14-15.

<sup>65</sup> 20 United States Code, section 6313(a).

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 on the Draft Expedited Parameters and Guidelines 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>66</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>67</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>68</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>69</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. Section IV. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity and the number of restrooms in each of these schools in order to support the actual costs incurred for labor and materials.

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 restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>70</sup>

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<sup>66</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>67</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>68</sup> Education Code, section 35292.6(a).

<sup>69</sup> Exhibit L, CDE, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on July 8, 2019).

<sup>70</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

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>71</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>72</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>73</sup> and that “the required costs may be overstated in the test claim.”<sup>74</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable:

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

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<sup>71</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>72</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>73</sup> Exhibit L, 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>74</sup> Exhibit L, Finance’s Comments on the Test Claim, page 2.

mandated program. The number of restrooms is not available on the school's websites.<sup>75</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>76</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 and the number of restrooms in each of these schools in order to show the relationship between the reimbursable activity and the costs claimed. 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 and how many pupils are enrolled in the school, which can provide valuable information about the reasonableness of the costs claims.

Thus, Section IV. of the Parameters and Guidelines is revised to reflect this clarification as follows:

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 and the number of restrooms in each of these schools.

***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>77</sup>

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<sup>75</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>76</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 5.

<sup>77</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

Although the Controller has allowed time studies in limited circumstances under the Controller's audit authority,<sup>78</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>79</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>80</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>81</sup> and proposed to the Commission for inclusion in the Parameters and Guidelines.<sup>82</sup> The parties have not filed a request to adopt an RRM in this case.

Accordingly, the request is denied.

4. The proposed activities to purchase and install dispensers for feminine hygiene products are not supported by substantial evidence in the record explaining why the activities are reasonably necessary to comply with the mandate and are, therefore, denied.

The Test Claim Decision approved the following reimbursable state-mandated activity for school districts with qualifying schools:

- 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>83</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

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<sup>78</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>79</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>80</sup> Government Code, section 17518.5.

<sup>81</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>82</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

<sup>83</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

any repairs/replacements of dispensers . . . .”<sup>84</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>85</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>86</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 documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>87</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

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<sup>84</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>85</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>86</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>87</sup> California Code of Regulations, title 2, section 1183.7(d).

matter of law.<sup>88</sup> “[I]nstance is insufficient to support a legal conclusion.”<sup>89</sup>

The Commission denies the claimant’s and interested person’s requests. They have provided no evidence to support a finding that the proposed activities of purchasing and installing dispensers are reasonably necessary to comply with the mandate. While the claimant argues that “[i]ninstalling dispensers is a reasonable, healthy, safe and effective method to satisfy the statute’s requirement ‘to stock at least 50 percent of the school’s restrooms with feminine hygiene products at all times,’” it provides no evidence to support this assertion.<sup>90</sup> Apart from invoices and a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District submitted with the Test Claim identifying the cost of the dispensers, no other evidence has been provided by the claimant with regard to the purchase and installation of dispensers.<sup>91</sup> The declaration only 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, 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>92</sup> This does not show *why* the dispensers are necessary to comply with the mandate to stock 50 percent of the school’s restrooms with feminine hygiene products.

The claimant points out that the legislative history of the test claim statute suggests that the Legislature had anticipated that the cost of complying with the mandate would include the cost of purchasing and installing dispensers for feminine hygiene products. The language quoted by the claimant is from the following analysis:

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

1) One-time state reimbursable mandated costs, ranging from the millions to tens of millions of dollars in Proposition 98 General Fund, for the bill’s requirement for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars.<sup>93</sup>

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<sup>88</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>89</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1369 (concurring opinion).

<sup>90</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>91</sup> Exhibit L, 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>92</sup> Exhibit L, Test Claim, pages 20-23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>93</sup> Exhibit L, Assembly Concurrence in Senate Amendments Analysis of AB 10 (2017-2018), as

The claimant contends that its evidence of costs for the purchase and installation of dispensers, coupled with “legislative history acknowledging that the mandate would result in school districts incurring costs to purchase and install dispensers,” constitutes substantial evidence in the record to support this activity as claimed.<sup>94</sup>

However, legislative analysis, from which one may infer the Legislature’s intent, is not binding on the Commission as to the existence of state-mandated activities and does not constitute evidence required to support an assertion of fact with respect to what is reasonably necessary to comply with the mandate.<sup>95</sup>

The Commission did not approve the purchase and installation of the dispensers as mandated activities in the Test Claim Decision because the activities are not required by the plain language of the test claim statute. Rather, the state has left the discretion to determine how the feminine hygiene products (tampons and sanitary napkins) will be made available to students, with the schools. Thus, there is nothing in the law, for example, that prohibits a school from stocking the feminine hygiene products in the restrooms in the box the products came in or in existing dispensers.<sup>96</sup>

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amended September 1, 2017, page 1; Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2; Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

<sup>94</sup> Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

<sup>95</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817 (stating that any legislative findings are irrelevant to the issue of whether a state mandate exists); Government Code sections 17552 (stating that Government Code section 17500 et seq., provides the sole and exclusive procedure to claim reimbursement of state-mandated costs), and 17559(b) (requiring that the Commission’s decision be supported with substantial evidence in the record); California Code of Regulations, title 2, sections 1183.7 (requiring that “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”) and section 1187.5 (requiring that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so; and that hearsay evidence may only be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.) See also, Evidence Code section 1200, which defines hearsay as “evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.”

<sup>96</sup> See e.g., Exhibit L, Berkeley USD Board Meeting (November 28, 2018), meeting agenda, pages 5-6 (stating that prior to the enactment of the test claim statute several BUSD secondary schools already had dispensers for menstrual products installed in the restrooms), <https://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=68149&AgencyTypeID=1&IsArchived=False> (accessed on August 14, 2019); Exhibit L, Berkeleyside, Berkeley Unified could require free menstrual products in school bathrooms (November 14, 2018),

Therefore, for the activities of purchasing and installing dispensers to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and section 1183.7 of the Commission's regulations, the parties must explain and support, with substantial evidence in the record and in accordance with the Commission's regulations, *why* the purchase and installation of dispensers are reasonably necessary to comply with the mandate. Section 1187.5 of the Commission's regulations requires that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so; and that hearsay evidence may only be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Thus, a declaration signed under penalty of perjury or sworn testimony from an employee of an eligible claimant, who is authorized and competent to provide testimony, explaining why purchasing and installing dispensers is reasonably necessary to comply with the mandate to stock 50 percent of the school's restrooms with feminine hygiene products, would comply with the evidentiary requirements.

Accordingly, based on this record, the Commission denies these requests.

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>97</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objects to the exclusion of costs for policies and procedures as follows:

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>98</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>99</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-

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<https://www.berkeleyside.com/2018/11/14/berkeley-unified-could-require-free-menstrual-products-in-school-bathrooms> (accessed on August 16, 2019).

<sup>97</sup> Exhibit L, Test Claim, pages 11, 21.

<sup>98</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>99</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.



mandated activity.<sup>100</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>101</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>102</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>103</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>104</sup> The declaration further states that the claimant's estimated 2018-2019 fiscal year costs for policies and procedures would amount to \$191.40, based on the previous year costs.<sup>105</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 and no other evidence has been provided by the claimant with regard to this activity.

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

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<sup>100</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>101</sup> Exhibit L, Test Claim, page 11.

<sup>102</sup> Exhibit L, Claimant's Rebuttal to Finance's Comments on the Test Claim, pages 1-2.

<sup>103</sup> Exhibit L, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>104</sup> Exhibit L, Test Claim, page 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>105</sup> Exhibit L, Test Claim, page 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

not contain this evidence.

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, and contracted services. However, fixed assets have been deleted from the Draft Proposed Parameters and Guidelines and are in strikeout in the Proposed Parameters and Guidelines because the activities of purchasing and installing dispensers are not mandated by the plain language of the test claim statute and there is no evidence in the record that these activities are reasonably necessary to comply with the mandate. Moreover, the claimant has identified no other fixed assets required to comply with the mandate. In addition, 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 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.

#### **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 activity is reimbursable for the district's schools that meet the criteria described above:

- A. 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 and the number of restrooms in each of these schools.

***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.***

## **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 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>106</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.

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<sup>106</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

## **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.

## **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.

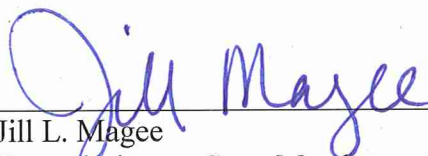
On September 11, 2019, I served the:

- **Proposed Decision and Parameters and Guidelines issued September 11, 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 September 11, 2019 at Sacramento, California.



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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