



October 2, 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: Revised Draft Proposed Decision and Parameters and Guidelines, Schedule for
Comments, and Notice of Hearing**

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 Revised 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 by **October 18, 2019**.¹ 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.²

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

¹ Note that this is not a 3-week comment period because the Commission's regulations do not provide for a comment period at all on a revised draft and a longer comment period would require a postponement to the January Commission meeting.

² 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
October 2, 2019
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, November 22, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about November 8, 2019.

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 be sending reminder emails. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately 2 weeks prior to the hearing 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.

Sincerely,



Heather Halsey
Executive Director

ITEM --

REVISED DRAFT 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

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.¹ On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.² On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)³ filed substantive comments on the Draft Expedited Parameters and Guidelines.⁴ On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.⁵ On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.⁶ On June 18, 2019, the Department of Finance (Finance) filed late substantive comments on the Draft Expedited Parameters and Guidelines.⁷ On June 19, 2019, the claimant filed rebuttal comments.⁸ 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.⁹ On June 26, 2019, the claimant filed rebuttal comments.¹⁰ On July 17, 2019, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.¹¹ On August 1, 2019, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines.¹² On September 11, 2019, Commission staff issued the Proposed Decision and Parameters and Guidelines for the September 27, 2019 hearing.¹³ On September 18, 2019, the

¹ Exhibit A, Test Claim Decision.

² Exhibit B, Draft Expedited Parameters and Guidelines.

³ 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."

⁴ Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

⁵ Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

⁶ Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

⁷ Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

⁸ Exhibit G, Claimant's Rebuttal Comments.

⁹ Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

¹⁰ Exhibit I, Claimant's Rebuttal Comments.

¹¹ Exhibit J, Draft Proposed Decision and Parameters and Guidelines.

¹² Exhibit K, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

¹³ Exhibit L, Proposed Decision and Parameters and Guidelines.

claimant filed late comments on the Proposed Decision and Parameters and Guidelines.¹⁴ On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District.¹⁵ 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.

III. Discussion

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

Commission staff proposes to clarify Section II. of the Proposed 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.

¹⁴ Exhibit M, Claimant’s Late Comments on the Proposed Decision and Parameters and Guidelines.

¹⁵ Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

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.¹⁶ 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.”¹⁷

These requests are not consistent with the test claim statute, and 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.¹⁸

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.¹⁹ 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,”²⁰ and that “the required costs may be overstated in the test claim.”²¹ Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable.²²

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, 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

¹⁶ Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

¹⁷ Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

¹⁸ Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

¹⁹ Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

²⁰ Exhibit X, 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.

²¹ Exhibit X, Finance’s Comments on the Test Claim, page 2.

²² Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

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 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. Therefore, Section IV.A. 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, 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 each 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.

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."²³

Although the Controller has allowed time studies in limited circumstances under the Controller's audit authority,²⁴ 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).²⁵ 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.²⁶ The

²³ Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

²⁴ Government Code sections 12410, 17558.5, and 17561.

²⁵ Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

²⁶ Government Code, section 17518.5.

Commission, however, is not authorized to develop an RRM,²⁷ and the parties have not filed a request to adopt an RRM in this case.

4. The proposed 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 claimant requests that the Commission approve “purchasing and installation of dispensers” as reasonably necessary to comply with the mandate.²⁸ Interested person, Reynolds Consulting Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost of dispensers and any repairs/replacements of dispensers.²⁹

On September 20, 2019, the claimant filed a declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, explaining why the purchase and installation of dispensers is necessary to comply with the mandate. The declaration explains that free release dispensers allow schools to stock feminine hygiene products in “the most reasonable, efficient, and economic” way, which makes the product readily available to students free of charge, but also helps to avoid waste as the dispensers allow the products to be released one at a time.³⁰

Thus, based on the evidence in the record, staff 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 be mandated 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 of replacing the existing dispensers.³¹ Under these circumstances, it would only be necessary to repair or

²⁷ Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

²⁸ Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

²⁹ Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

³⁰ Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

³¹ 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 X, 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>. 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.

retrofit the dispensers to comply with the mandate, and would not be necessary to incur increased costs to buy all new dispensers.

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 comply with the mandate to stock 50 percent of the school's restrooms with feminine hygiene products at all times. 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 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 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 each 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 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.

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 explaining why the proposed activity is necessary for the performance of the state-mandated activity.³²

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

See e.g., Exhibit X, 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 X, 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/ (accessed on September 20, 2019).

³² Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

Parameters and Guidelines.³³ 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.³⁴ To support its requests for the cost of policies and procedures the claimant submitted two declarations from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, both stating only 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”,³⁵ and identifying the cost at \$347.16 in the 2017-2018 fiscal year, and estimating further costs at \$191.40 for 2018-2019 fiscal year.³⁶

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 but has instead only provided evidence that it has incurred costs to perform these activities.

6. The proposed 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,” and included a declaration of the costs incurred to provide the training.³⁷ Training 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.³⁸ 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.

On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, which appears to reassert claimant’s request for the

³³ Exhibit X, Test Claim, pages 11, 21. See also Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

³⁴ Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

³⁵ Exhibit X, Test Claim, page 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018); Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

³⁶ Exhibit X, Test Claim, pages 20, 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

³⁷ Exhibit X, Test Claim, pages 20-23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

³⁸ Exhibit X, Test Claim, pages 11-12, 13.

cost of training.³⁹ However, this declaration 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 explanation of why training is reasonably necessary to comply with the mandate.⁴⁰

This activity is denied because the claimant has not provided substantial evidence in the record to support a finding that training of personnel 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, fixed assets, and contracted services. However, 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.

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.

³⁹ 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).

⁴⁰ Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

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)

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. [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:

Member	Vote
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.⁴¹ On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.⁴² On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)⁴³ filed comments on the Draft Expedited Parameters and Guidelines.⁴⁴ On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.⁴⁵ On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.⁴⁶ On June 18, 2019, the Department of Finance (Finance) filed late comments on the Draft Expedited Parameters and Guidelines.⁴⁷ On June 19, 2019, the claimant filed rebuttal

⁴¹ Exhibit A, Test Claim Decision.

⁴² Exhibit B, Draft Expedited Parameters and Guidelines.

⁴³ 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."

⁴⁴ Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

⁴⁵ Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

⁴⁶ Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

⁴⁷ Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

comments.⁴⁸ 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.⁴⁹ On June 26, 2019, the claimant filed rebuttal comments.⁵⁰ On July 17, 2019, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.⁵¹ On August 1, 2019, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines.⁵² On September 11, 2019, Commission staff issued the Proposed Decision and Parameters and Guidelines for the September 27, 2019 hearing.⁵³ On September 18, 2019, the claimant filed late comments on the Proposed Decision and Parameters and Guidelines.⁵⁴ On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District.⁵⁵ 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.

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.⁵⁶

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

⁴⁸ Exhibit G, Claimant's Rebuttal Comments.

⁴⁹ Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

⁵⁰ Exhibit I, Claimant's Rebuttal Comments.

⁵¹ Exhibit J, Draft Proposed Decision and Parameters and Guidelines.

⁵² Exhibit K, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

⁵³ Exhibit L, Proposed Decision and Parameters and Guidelines.

⁵⁴ Exhibit M, Claimant's Late Comments on the Proposed Decision and Parameters and Guidelines.

⁵⁵ Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

⁵⁶ Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).⁵⁷

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.⁵⁸

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.⁵⁹

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.⁶⁰ The claimant requests that the comments be stricken from the record.⁶¹ 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.⁶²

⁵⁷ Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁵⁸ Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁵⁹ 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 X, 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.)

⁶⁰ Exhibit G, Claimant's Rebuttal Comments, page 1.

⁶¹ Exhibit G, Claimant's Rebuttal Comments, page 1.

⁶² 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

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.”^{63,64} On September 18, 2019, the claimant filed late comments on the Proposed Decision and Parameters and Guidelines, reiterating the same arguments.⁶⁵

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.⁶⁶ 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 Claim Decision.⁶⁷

B. State Controller’s Office

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).

⁶³ 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 X, CSM Public Hearing (May 24, 2019), transcript of proceedings, pages 18-21.

⁶⁴ Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

⁶⁵ Exhibit M, Claimant’s Late Comments on the Proposed Decision and Parameters and Guidelines.

⁶⁶ Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

⁶⁷ 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).

On June 14, 2019, the Controller filed comments on the Draft Expedited Parameters and Guidelines and recommends “no changes.”⁶⁸ 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.⁶⁹

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.’”⁷⁰ 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.⁷¹ 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.⁷²

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

⁶⁸ Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

⁶⁹ Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines.

⁷⁰ Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

⁷¹ Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

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

determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.⁷³

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.⁷⁴

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, 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.⁷⁵

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.⁷⁶

⁷³ Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

⁷⁴ Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

⁷⁵ Exhibit A, Test Claim Decision, page 21.

⁷⁶ Education Code section 35292.6(a).

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 area⁷⁷ or be a participating Title I, Part A school,⁷⁸ *and*
- 2) Meet the second test identified in section 6314(a)(1)(A),⁷⁹ requiring that not less than 40 percent of the children enrolled in the school are from low-income families.⁸⁰

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.⁸¹ 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 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

⁷⁷ 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).

⁷⁸ See 20 United States Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(i).

⁷⁹ See also, 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(B).

⁸⁰ Exhibit A, Test Claim Decision, pages 14-15.

⁸¹ 20 United States Code, section 6313(a).

- 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.⁸²

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

⁸² Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.”⁸³

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.”⁸⁴ 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.⁸⁵ 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 restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).⁸⁶

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

⁸³ Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

⁸⁴ Education Code, section 35292.6(a).

⁸⁵ Exhibit X, CDE, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on July 8, 2019).

⁸⁶ Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

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.⁸⁷

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."⁸⁸ 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,"⁸⁹ and that "the required costs may be overstated in the test claim."⁹⁰ 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 mandated program. The number of restrooms is not available on the school's websites.⁹¹

Section IV. of the Parameters and Guidelines contains the following boilerplate language:

⁸⁷ Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

⁸⁸ Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

⁸⁹ Exhibit X, 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.

⁹⁰ Exhibit X, Finance's Comments on the Test Claim, page 2.

⁹¹ Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

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.⁹²

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.

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."⁹³

⁹² Exhibit B, Draft Expedited Parameters and Guidelines, page 5.

⁹³ 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,⁹⁴ 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).⁹⁵ 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.⁹⁶ 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 party⁹⁷ and proposed to the Commission for inclusion in the Parameters and Guidelines.⁹⁸ 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:

- 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.*⁹⁹

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

⁹⁴ Government Code sections 12410, 17558.5, and 17561.

⁹⁵ Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

⁹⁶ Government Code, section 17518.5.

⁹⁷ 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.

⁹⁸ Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

⁹⁹ Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

any repairs/replacements of dispensers”¹⁰⁰

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.¹⁰¹ 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.¹⁰²

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.¹⁰³

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

¹⁰⁰ Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

¹⁰¹ Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

¹⁰² Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

¹⁰³ California Code of Regulations, title 2, section 1183.7(d).

matter of law.¹⁰⁴ “[I]nstance is insufficient to support a legal conclusion.”¹⁰⁵

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.¹⁰⁶ 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,¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹ 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 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

¹⁰⁴ 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.”

¹⁰⁵ *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1369 (concurring opinion).

¹⁰⁶ Exhibit X, 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).

¹⁰⁷ Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

¹⁰⁸ Exhibit X, Test Claim, pages 20-23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

¹⁰⁹ Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

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.¹¹⁰

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.¹¹¹ 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.

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. 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

¹¹⁰ Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

¹¹¹ 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 X, 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>. 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 X, 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 X, 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/ (accessed on September 20, 2019).

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 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).

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.¹¹² 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.*¹¹³

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.¹¹⁴

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-

¹¹² Exhibit X, Test Claim, pages 11, 21.

¹¹³ Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

¹¹⁴ Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

mandated activity.¹¹⁵

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.¹¹⁶ 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.”¹¹⁷ 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.¹¹⁸ 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”.¹¹⁹ 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.¹²⁰ 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[.]”¹²¹ Mr. Aquino’s declaration does not show *why* the activity to develop policies and procedures is reasonably necessary to

¹¹⁵ Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

¹¹⁶ Exhibit X, Test Claim, page 11.

¹¹⁷ Exhibit X, Claimant’s Rebuttal to Finance’s Comments on the Test Claim, pages 1-2.

¹¹⁸ Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

¹¹⁹ Exhibit X, Test Claim, page 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

¹²⁰ Exhibit X, Test Claim, page 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

¹²¹ Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

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.¹²² 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:

- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools’ restrooms[.]¹²³

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.¹²⁴

¹²² Exhibit X, Test Claim, pages 11-12, 13.

¹²³ Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

¹²⁴ Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

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.¹²⁵

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.¹²⁶ 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.”¹²⁷

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,¹²⁸ 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,¹²⁹ and at \$2,132.48 for 34 principals and 49 custodians at 0.5 hours each in 2018-2019 fiscal year.¹³⁰ 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

¹²⁵ Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

¹²⁶ Exhibit X, Test Claim, page 11.

¹²⁷ Exhibit X, Claimant's Rebuttal to Finance's Comments on the Test Claim, pages 1-2.

¹²⁸ Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

¹²⁹ Exhibit X, Test Claim, pages 20-21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

¹³⁰ Exhibit X, Test Claim, page 23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

products in the schools' restrooms," but provides no further information or explanation why training is necessary.¹³¹

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.

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

¹³¹ Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

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, ~~and~~ 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.¹³²

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 only to the extent that a school is not already equipped with a sufficient number of dispensers in their

¹³² Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, September 20, 2019.

restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate.

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 chapter¹³³ 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.

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

¹³³ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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.

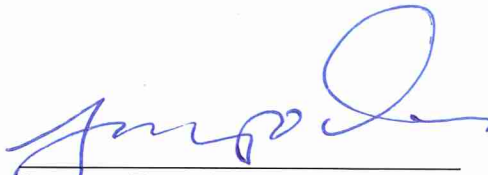
On October 2, 2019, I served the:

- **Revised Draft Proposed Decision and Parameters and Guidelines issued October 2, 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 October 2, 2019 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

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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