



December 9, 2020

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: Statewide Cost Estimate**

*Public School Restrooms: Feminine Hygiene Products, 18-TC-01*  
Education Code Section 35292.6 as added by Statutes 2017, Chapter 687 (AB 10)

Dear Mr. Palkowitz and Ms. Sidarous:

On December 4, 2020, the Commission on State Mandates adopted the Statewide Cost Estimate on the above-entitled matter.

Sincerely,

Heather Halsey  
Executive Director

**STATEWIDE COST ESTIMATE**

**\$1,547,455- \$5,576,255<sup>1</sup>**

**(For the Initial Claiming Period of 2017-2018 and 2018-2019)**

**(Estimated Annual Costs for Fiscal Year 2019-2020 and Following Is**

**\$548,610 - \$2,169,774**

**Plus the Implicit Price Deflator)<sup>2</sup>**

Education Code Section 35292.6 as added by Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

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The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate on consent during a regularly scheduled hearing on December 4, 2020 as follows:

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

**STAFF ANALYSIS**

**Background and Summary of the Mandate**

This Statewide Cost Estimate addresses the State’s liability for the subvention of costs for the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (test claim statute). The Commission found that the test claim statute imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, for school districts with schools that: (1) maintain any

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<sup>1</sup> The high end of this range includes potential late and amended claims that may be filed until June 23, 2021, less a 10 percent late filing penalty.

<sup>2</sup> The high end of this range estimates the maximum cost if all school districts in California with schools required to comply with the mandate file reimbursement claims.

combination of classes from grade 6 through grade 12, inclusive; *and* (2) meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families, to stock 50 percent of the schools' restrooms with feminine hygiene products (defined as tampons and sanitary napkins) at all times at no cost to pupils.<sup>3</sup>

The Decision and Parameters and Guidelines for claiming costs incurred beginning January 1, 2018, were adopted on November 22, 2019.<sup>4</sup>

The State Controller's Office (Controller) issued claiming instructions on February 24, 2020.<sup>5</sup> Eligible claimants were required to file initial reimbursement claims with the Controller for costs incurred in fiscal year 2017-2018, beginning January 1, 2018, and in fiscal year 2018-2019, by June 23, 2020.<sup>6</sup> Late initial reimbursement claims may be filed until June 23, 2021, but will incur a 10 percent late filing penalty of the total amount of the initial claim without limitation.<sup>7</sup> Annual reimbursement claims for subsequent fiscal years, starting with fiscal year 2019-2020, must be filed with the Controller by February 15 following the fiscal year in which costs were incurred.<sup>8</sup> Annual claims filed more than one year after the deadline will not be accepted, and late claims filed within one year of the deadline will incur a 10 percent late filing penalty not to exceed \$10,000.<sup>9</sup>

During the test claim process, the claimant filed evidence to support its alleged increased costs of \$61,615.72 to comply with the mandate in fiscal year 2017-2018. This amount includes costs for developing and implementing policies and procedures, training, purchasing and installing dispensers, purchasing sanitary napkins and tampons, and labor to stock the products.<sup>10</sup> The claimant's estimated costs alleged for the 2018-2019 fiscal year, based on the 2017-2018 costs, amounted to \$43,988.22, including \$39,629.38 for stocking the restrooms with feminine hygiene products.<sup>11</sup>

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<sup>3</sup> Exhibit B, Test Claim Decision, adopted May 24, 2019, page 21.

<sup>4</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019.

<sup>5</sup> Exhibit D, Controller's Claiming Instructions 2020-02, Program No. 374, dated February 24, 2020, page 1.

<sup>6</sup> Exhibit D, Controller's Claiming Instructions 2020-02, Program No. 374, dated February 24, 2020, page 2.

<sup>7</sup> Government Code sections 17561(d)(3), 17568.

<sup>8</sup> Government Code section 17560(a).

<sup>9</sup> Government Code section 17568.

<sup>10</sup> Exhibit A, Test Claim, filed December 7, 2018, page 3.

<sup>11</sup> Exhibit A, Test Claim, filed December 7, 2018, page 3.

The claimant also estimates that the annual statewide cost to implement the alleged mandate is \$5,000,000.<sup>12</sup>

### **Eligible Claimants and Period of Reimbursement**

Any “school district” as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate, for the district’s schools that meet the following criteria:

- Maintain any combination of classes from grade six to grade 12, inclusive; *and*
- Meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687 became effective on January 1, 2018, establishing the period of reimbursement beginning January 1, 2018.<sup>13</sup>

### **Reimbursable Activities**

The Parameters and Guidelines authorize reimbursement for the following ongoing activities:

- A. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support the actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

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

***Reimbursement is not required to stock more than 50 percent of the school’s restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

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<sup>12</sup> Exhibit A, Test Claim, filed December 7, 2018, page 3.

<sup>13</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 23.

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

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

***Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.***<sup>14</sup>

### **Offsetting Revenues and Reimbursements**

The Parameters and Guidelines contain the following boilerplate language:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.<sup>15</sup>

There are no known sources of offsetting revenues, and no offsetting revenues were identified in the initial reimbursement claims.

### **Statewide Cost Estimate**

Commission staff reviewed the 169 reimbursement claims (97 for 2017-2018 and 72 for 2018-2019) submitted by 115 school districts<sup>16</sup> for 1,140 schools and data compiled by the Controller.<sup>17</sup> The unaudited reimbursement claims request reimbursement for a total \$922,121 for fiscal year 2017-2018, beginning January 1, 2018, and \$625,334 for fiscal year 2018-2019, totaling \$1,547,455 for the initial reimbursement period, with the total cost segregated by activity

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<sup>14</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, pages 24-25.

<sup>15</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 26.

<sup>16</sup> Of the 115 school districts that filed claims during the initial claim period, 54 districts filed claims for both fiscal years, 43 districts filed claims for just fiscal year 2017-2018, and 18 districts filed claims for just 2018-2019. (Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 1-2.)

<sup>17</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 1-2; Exhibit G, Excerpt, List of Schools from 2017-2018 Reimbursement Claims; Exhibit G, Excerpt, List of Schools from 2018-2019 Reimbursement Claims. Some claims listed the "District Office" under the list of schools required to comply with the mandate. The total number of schools (1,140) does not include the "District Offices" because the mandate applies only to those schools that meet the criteria in Education Code section 35292.6.

as follows:

\$664,260 <sup>18</sup>	Activity A. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.
\$827,260	Activity B. Purchase and install, or retrofit or repair, a sufficient number of suitable dispensers for feminine hygiene products in 50 percent of the school’s restrooms. <sup>19</sup>
\$56,750	Indirect Costs
\$0	Offsetting Revenues or Other Reimbursements <sup>20</sup>
(\$815)	Less 10 Percent Late Filing Penalty
<b>\$1,547,455</b>	<b>Total Costs Claimed<sup>21</sup></b>

*Initial Reimbursement Period, Fiscal Years 2017-2018, 2018-2019*

The statewide cost for the initial reimbursement period is estimated to range from \$1,547,455, the total amount of unaudited filed reimbursement claims, to \$5,576,255, the total estimated cost for school districts with schools subject to the mandate for fiscal years 2017-2018 and 2018-2019, less a 10 percent late filing penalty, based on the assumptions outlined in the analysis, with

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<sup>18</sup> The Controller’s Summary of Claims, for 2018-2019, shows total costs claimed for Activity A. of \$448,567. However, this amount does not include the costs claimed for Activity A. by Merced City School District of \$7,704. (The Controller’s Summary of Claims identifies this District as “Merced Elementary School District, but the District’s correct name, as identified on the reimbursement claims filed, is Merced City School District.) Instead, the Controller’s summary mistakenly identifies the total amount of feminine hygiene products purchased by Merced at 7,704 products. (Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 10.) However, the reimbursement claim filed by Merced City School District claims costs of \$7,704 for Activity A., and did not identify the amount of product purchased. (Exhibit G, Excerpt from Merced City School District’s 2018-2019 Reimbursement Claim.) Thus, the total amount claimed for Activity A. for fiscal year 2018-2019 should total \$456,271, instead of \$448,567 (a \$7,704 difference), as indicated on page 12 of Exhibit E. The correct amount claimed for 2018-2019 of \$456,271, plus the costs claimed for Activity A. for 2017-2018 of \$207,989, totals \$664,260.

<sup>19</sup> This amount represents costs actually claimed for Activity B.1. (purchase and install dispensers) of \$826,309 and for Activity B.2. (retrofit and repair dispensers) of \$951, for a total of \$827,260.

<sup>20</sup> There are no known or reported offsetting revenues at this time.

<sup>21</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 6-8, 10, 12, indicate that a desk review is in progress for the reimbursement claims submitted by Merced City School District, Santa Ana Unified School District, Guadalupe Union Elementary School District, and Yosemite Unified School District; that the summary reduces an amount claimed by Jurupa Unified School District; and that the claims data for Merced City School District was incomplete and that a revised claim would be filed.

costs segregated by activity as follows:

\$664,260 - \$2,610,841	Activity A. Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. <sup>22</sup>
\$827,260 - \$3,182,154	Activity B. Purchase and install (or retrofit and repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms. <sup>23</sup>
\$56,750 - \$231,720	Indirect Costs <sup>24</sup>
\$0	Offsetting Revenues <sup>25</sup>
(\$815 - \$448,460)	Less 10 Percent Late Filing Penalty <sup>26</sup>
<b>\$1,547,455 - \$5,576,255</b>	<b>Total Estimated Costs</b>

*Fiscal Year 2019-2020 and Following*

Future statewide annual costs beginning fiscal year 2019-2020 are estimated to range from \$548,610 - \$2,169,774, plus the implicit price deflator, based on the assumptions outlined in the analysis, with the range of costs segregated by activity as follows:

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<sup>22</sup> The low end of the range represents costs actually claimed for Activity A. of \$664,260. The high end of the range represents all potential costs that could be claimed for Activity A. including in late or amended claims filed by school districts with schools required to comply with the mandate, for a total of \$2,610,841.

<sup>23</sup> The low end of the range represents costs actually claimed for Activity B.1. (purchase and install dispensers) of \$826,309 and for Activity B.2. (retrofit and repair dispensers) of \$951, for a total of \$827,260. The high end of the range represents all potential costs that could be claimed for Activity B. including in late or amended claims filed by school districts with schools required to comply with the mandate, for a total of \$3,182,154.

<sup>24</sup> The low end of the range represents the indirect costs actually claimed. The high end of the range is the average of the indirect cost rates claimed in the unaudited initial claims multiplied by the estimated direct costs.

<sup>25</sup> The high end of the projected potential costs for the initial reimbursement period makes no assumptions regarding offsetting revenues or reimbursements. There are no known or reported offsetting revenues at this time.

<sup>26</sup> The low end of the range represents penalties already recognized by the Controller's Office. The high end includes the penalty based on the estimated costs that may still be claimed in late or amended claims for the initial claiming period (\$6,024,715 in total estimated statewide direct and indirect costs that may yet be claimed - \$1,548,270 in costs actually claimed to date = \$4,476,445 x 10% = \$447,645 + (\$815 penalties imposed on costs actually claimed) = \$448,460).

\$444,784 - \$1,746,260	Activity A. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.
\$82,726 - \$340,061	Activity B. Purchase and install (or retrofit and repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school’s restrooms.
\$21,100 - \$83,453	Indirect Costs
(\$0)	Offsetting Revenues <sup>27</sup>
<b>\$548,610 - \$2,169,774</b>	<b>Total Estimated Future Costs</b>

**Assumptions**

Based on the claims data and other publicly available information, staff made the following assumptions and used the following methodology to develop the Statewide Cost Estimate for this program.

- *The total amount claimed for the initial reimbursement period may increase as a result of late or amended initial claims.*

There are 1,037 school districts and 10,588 schools in the State of California<sup>28</sup> and, as explained below, there are approximately 5,653 schools in fiscal year 2017-2018; 5,630 schools in fiscal year 2018-2019; and 5,579 schools in 2019-2020 that are mandated to comply with this program because these schools:

- Maintain any combination of classes from grade 6 to grade 12, inclusive; *and*
- Meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)<sup>29</sup>

Only 115 school districts filed reimbursement claims (97 filed for 2017-2018 and 72 filed for 2018-2019) with the Controller during the initial reimbursement period, and have identified costs incurred by a total of 1,140 schools within their districts. However, 1,140 schools is just 20 percent of the schools in the State required to comply with the mandated program. Accordingly, several more late claims may be filed. If all eligible school districts file late or amended initial

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<sup>27</sup> No assumptions are made on offsetting revenues. There are no known or reported offsetting revenues at this time.

<sup>28</sup> Exhibit G, California Department of Education, Fingertip Facts on Education in California – *CalEdFacts*, <https://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp> (accessed on June 30, 2020).

<sup>29</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 23.



claims, the amount claimed will exceed the lower end of the Statewide Cost Estimate. Late claims for the initial period of reimbursement may be filed until June 23, 2021, but will be reduced by a 10 percent late filing penalty without limitation.<sup>30</sup>

There may be several reasons why eligible school districts did not file reimbursement claims by the June 23, 2020 deadline, including but not limited to the following: (1) disruptions due to the COVID-19 pandemic prevented the district from preparing and filing a reimbursement claim by the deadline; (2) the district did not incur costs exceeding the \$1,000 minimum threshold; or (3) the district had a relatively low number of schools that meet both the Title I, Part A requirement *and* the requirement that at least 40 percent of the pupils enrolled in the school are from low-income families or relatively low costs and, thus, the district determined that it was not cost-effective to participate in the reimbursement claim process.

It is likely that there will be an unusually high number of late initial claims for this program due to the challenges in filing timely reimbursement claims during the COVID-19 pandemic, with many employees taking sick and family leave and most who are primarily teleworking without regular access to any paper documentation that may have been maintained for claiming purposes and with other, higher priority, duties to attend to.

Thus, the total amount claimed for the initial reimbursement period may increase as a result of late or amended initial claims.

- *The future annual costs for this program may increase or decrease based on the number of schools within a school district that are Title I, Part A eligible and meet the 40 percent pupil poverty threshold mandating them to comply with the reimbursable activities, the number of enrolled females, and the increase or decrease in the cost of materials and employee salaries.*

There are several factors that drive the future annual costs of this program, and dependent upon their correlation, the program costs may increase or decrease. If more students in the future become eligible for free or reduced priced meals under federal law, or are otherwise determined to meet the pupil poverty threshold, then more schools may have to comply with the mandate, resulting in increased statewide costs. As a measure of pupil poverty, schools can participate in Community Eligibility Provision (CEP) if their Identified Student Percentage (ISP) for the school, group of schools, or district is at least 40 percent.<sup>31</sup> Eligibility to participate in the CEP is based on the percentage of students receiving benefits from the Supplemental Nutrition Assistance Program (formerly food stamps) or other specific means-tested programs, which is known as the ISP. Based on its streamlined application process and goal to increase access to school meals for children in low-income areas while reducing the burden associated with collecting household applications, the CEP allows these schools to offer free meals to *all*

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<sup>30</sup> Government Code sections 17561(d)(3), 17568.

<sup>31</sup> Exhibit G, *Characteristics of School Districts Offering Free School Meals to All Students Through the Community Eligibility Provision of the National School Lunch Program*, by Stephanie Rogus, Joanne Guthrie, Katherine Ralston, <https://www.ers.usda.gov/webdocs/publications/89948/err255-summary.pdf?v=1215.1> (accessed on August 17, 2020).

students,<sup>32</sup> thereby potentially increasing the likelihood that more schools may be required to comply with the mandated program.<sup>33</sup>

Future program costs also depend on the increase or decrease in female pupil enrollment in grades six through 12. According to the Department of Finance (Finance), K-12 enrollment is projected to decline by 2028-2029 as follows:

State enrollment has experienced the fifth consecutive decrease in total public K-12 enrollment in the 2018-2019 school year (-25,000 students), enrolling 6,185,200. . . Over the next ten years, if current trends in fertility and migration hold, a further decline of 425,700 in total enrollment is projected, resulting in total enrollment of 5,759,500 by 2028-29.<sup>34</sup>

The Public Policy Institute of California cites to Finance which projects an enrollment decline in K-12 of seven percent between 2020-2021 and 2027-2028.<sup>35</sup> For purposes of this analysis, it is assumed that the projected enrollment decline is spread evenly across grades. Thus, a one percent yearly decline is assumed in each future year beginning fiscal year 2020-2021.

In addition, as a result of COVID-19, there were school closures during the spring of the 2019-2020 school year and through at least the fall of the 2020-2021 school year for most districts, which will likely result in a temporary reduction of costs claimed, particularly for the 2020-2021 school year. These particular temporary savings are not included in the cost estimate, but should be noted as an explanation for the likely reason that the 2020-2021 claims may be lower than even the low end of the estimate.

Statewide costs may increase if the cost of materials and supplies and labor increases. For

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<sup>32</sup> Exhibit G, *Characteristics of School Districts Offering Free School Meals to All Students Through the Community Eligibility Provision of the National School Lunch Program*, by Stephanie Rogus, Joanne Guthrie, Katherine Ralston, <https://www.ers.usda.gov/webdocs/publications/89948/err255-summary.pdf?v=1215.1> (accessed on August 17, 2020).

<sup>33</sup> Exhibit G, *Characteristics of School Districts Offering Free School Meals to All Students Through the Community Eligibility Provision of the National School Lunch Program*, by Stephanie Rogus, Joanne Guthrie, Katherine Ralston, <https://www.ers.usda.gov/webdocs/publications/89948/err255-summary.pdf?v=1215.1> (accessed on August 17, 2020).

<sup>34</sup> Exhibit G, *California Public K-12 Graded Enrollment and High School Graduate Projections by County — 2019 Series*, Department of Finance, [http://www.dof.ca.gov/Forecasting/Demographics/Projections/Public\\_K-12\\_Graded\\_Enrollment/](http://www.dof.ca.gov/Forecasting/Demographics/Projections/Public_K-12_Graded_Enrollment/) (accessed on June 30, 2020).

<sup>35</sup> Exhibit G, *Declining Enrollment in California Schools: Fiscal Challenges and Opportunities in the Coming Decade*,” Public Policy Institute of California, February 2020 (Citing to the Department of Finance), <https://www.ppic.org/wp-content/uploads/declining-enrollment-in-california-schools-fiscal-challenges-and-opportunities-in-the-coming-decade.pdf> (accessed on October 1, 2020), page 7.

example, a Google search for the cost of dispensers shows a wide variation in costs, depending on the size and brand purchased. Costs can range from what the test claimant paid (\$157 to \$170 per unit), to as high as \$508 (for the EVOGEN Sanitary Napkin/Tampon Dispenser).<sup>36</sup> The assumption is that the newer, advanced dispensers that have a modern, streamlined design, provide an Americans with Disabilities Act compliant push button dispenser, and have a front adjustable tampon channel to accommodate future product opportunities, are more expensive and will increase program costs. Moreover, employee salaries may increase or decrease in the future, thereby increasing or decreasing labor costs to comply with the mandate.

Therefore, the assumption is that future annual costs for this program may increase or decrease based on the number of schools within a school district that are Title 1, Part A eligible and meet the 40 percent pupil poverty threshold mandating them to implement the reimbursable activities, the number of enrolled females in grades six through 12, and the increase or decrease in the cost of materials and supplies and labor.

- *The total amount for this program may be lower than the Statewide Cost Estimate based on the Controller's audit findings.*

Pursuant to Government Code section 17561, the Controller may conduct audits and reduce any claim it deems to be excessive or unreasonable. Therefore, costs may be lower than the Statewide Cost Estimate based on the Controller's audit findings.

- *The future annual costs for this program may be lower than the Statewide Cost Estimate if this program is added to the K-12 Mandate Block Grant and school districts voluntarily participate in the Block Grant.*

If this mandated program is added to the K-12 Mandate Block Grant *and* a school district voluntarily participates in the block grant program, then costs cannot be claimed through the State's reimbursement process.<sup>37</sup> A school district that receives block grant funding is not eligible to submit claims to the Controller for reimbursement pursuant to Government Code section 17560 for any costs of any state mandates included in the statutes and executive orders identified in Government Code section 17581.6(c)(3).<sup>38</sup> The block grant allows school districts to receive a per pupil allocation to carry out reimbursable mandated activities. As a result, the future annual costs of this program may be lower than the Statewide Cost Estimate.

- *The estimated number of schools, statewide, required to comply with the mandate is 5,653 for fiscal year 2017-2018; 5,630 for fiscal year 2018-2019; and 5,579 for fiscal year 2019-2020.*

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<sup>36</sup> Exhibit A, Test Claim, filed December 7, 2018, pages 21, 23 (Declaration of Jordan Aquino, Chief Business Officer, Desert Sands USD), and 26 (purchase order for the 2017-2018 purchase of dispensers); Exhibit G, Google search for feminine hygiene dispensers, [https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF\\_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKewj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAgMECs&biw=1920&bih=969](https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKewj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAgMECs&biw=1920&bih=969) (accessed on July 1, 2020).

<sup>37</sup> Government Code section 17581.6(b).

<sup>38</sup> Government Code section 17581.6(c)(3).

The actual number of schools, statewide, that maintain any combination of classes from grade six to grade 12, inclusive, which meet both threshold requirements mandating them to implement the reimbursable activities (the school is eligible for Title I, Part A funds and at least 40 percent of the children enrolled in the school are from low-income families) is unknown.

The legislative history for the test claim statute estimated that 3,093 schools are required to comply with the mandated program.<sup>39</sup> However, the analysis does not explain how that number was estimated.

California Department of Education (CDE) publishes a list of all K-12 schools in California receiving Title 1, Part A funds, which shows that a total of 6,949 K-12 schools received Title 1, Part A funds in 2017-2018<sup>40</sup> and 7,068 K-12 schools received these funds in 2018-2019.<sup>41</sup> These numbers, however, do not identify which of these schools also have at least 40 percent of the children enrolled from low-income families or what grade levels the schools maintain. The mandate applies to all schools that maintain grades six to 12 and, therefore, the mandated program applies to elementary schools that go up to grade six, middle schools, and high schools.

Thus, a better measure can be taken from CDE's Student Poverty Free and Reduced Price Meals (FRPM) reports.<sup>42</sup> These reports contain the data pertaining to students who are eligible for Free or Reduced Price Meals, which is certified by local educational agencies as part of the California Longitudinal Pupil Achievement Data System (CALPADS) Fall 1 data submission.<sup>43</sup> Under federal law, local educational agencies can use several measures of poverty to determine a school's eligibility for Title 1, Part A funds, one of which is the number of students enrolled and eligible for the free or reduced price lunch program.<sup>44</sup> CDE's Student Poverty FRPM reports provide unduplicated data for fiscal years 2017-2018, 2018-2019, and 2019-2020, by school, with the grade levels identified, and the percentage of students enrolled on Census Day (the first Wednesday in October) eligible to receive free or reduced price meals under federal law, which were filtered to exclude non-public, nonsectarian schools; preschool, kindergarten, and adult schools; schools that do not maintain grade levels six to 12, inclusive; and schools in which less than 40 percent of the students are eligible for free or reduced price meals.<sup>45</sup> The data was then

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<sup>39</sup> Exhibit G, Senate Committee on Education, Analysis of AB 10 (2017-2018), June 28, 2017, page 3.

<sup>40</sup> Exhibit G, California Department of Education, Title 1, Part A School Allocations, Fiscal Year 2017-2018 (XLSX), <https://www.cde.ca.gov/sp/sw/t1/schoolallocations.asp> (accessed on June 30, 2020).

<sup>41</sup> Exhibit G, California Department of Education, Title 1, Part A School Allocations, Fiscal Year 2018-2019 (XLSX), <https://www.cde.ca.gov/sp/sw/t1/schoolallocations.asp> (accessed on June 30, 2020).

<sup>42</sup> Exhibit G, California Department of Education, Student Poverty – Free or Reduced Price Meals Data, <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>43</sup> Exhibit G, California Department of Education, Student Poverty – Free or Reduced Price Meals Data, <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>44</sup> 20 United States Code section 6313(a)(5)(A).

<sup>45</sup> Exhibit G, California Department of Education, 2017-18 (Filtered) Unduplicated Student

totaled and shows that 5,653 schools in fiscal year 2017-2018; 5,630 schools in fiscal year 2018-2019; and 5,579 schools in fiscal year 2019-2020 maintained grades six to 12 and had at least 40 percent of the children enrolled eligible for free or reduced price meals.<sup>46</sup>

Therefore, based on CDE's Student Poverty FRPM reports, the estimated number of schools statewide that are required to comply with the mandated program, and may still file late or amended claims for the initial reimbursement period and a claim for 2019-2020, is estimated to be 5,653 for fiscal year 2017-2018; 5,630 for fiscal year 2018-2019; and 5,579 for fiscal year 2019-2020.

- *The estimated number of female pupils enrolled in grades six to 12 in the schools mandated to comply with the program is assumed to be 938,276 for fiscal year 2017-2018; 924,742 for fiscal year 2018-2019; and 919,084 for 2019-2020.*

The annual cost of this program has a direct correlation with the number of female pupils in grades six through 12, who are enrolled in the schools required to comply with the mandated program. The actual number of female pupils in the schools required to comply with the mandated program is unknown.

However, CDE's Student Poverty FRPM reports identify total enrollment in those schools that have students eligible for the FRPM program, and when filtered to exclude non-public, nonsectarian schools; adult schools; schools that do not offer grades six to 12; and schools that have less than 40 percent of the students eligible for free and reduced price meals, the *total enrollment* in the schools required to comply with the mandated program is as follows:

In fiscal year 2017-2018, total enrollment in the schools required to comply with the mandate is 3,475,098.<sup>47</sup>

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Poverty – Free or Reduced Price Meals Data (XLSX; 2MB; Revised 25-May-2018), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020); Exhibit G, California Department of Education, 2018-19 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XSLX; 2MB Posted 28-Mar-2019), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020); Exhibit G, California Department of Education, 2019-20 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XSLX; 2MB; Posted 13-Apr-2020), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>46</sup> Exhibit G, California Department of Education, 2017-18 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XLSX; 2MB; Revised 25-May-2018), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020); Exhibit G, California Department of Education, 2018-19 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XSLX; 2MB Posted 28-Mar-2019), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020); Exhibit G, California Department of Education, 2019-20 (Filtered) Unduplicated Student Poverty – Free or Reduced Price Meals Data (XSLX; 2MB; Posted 13-Apr-2020), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>47</sup> Exhibit G, California Department of Education, 2017-2018 (Filtered) Unduplicated Student Poverty - Free and Reduced Price Meals Data (XLSX; 2MB; Revised 25-May-2018),



In fiscal year 2018-2019, total enrollment in the schools required to comply with the mandate is 3,424,969.<sup>48</sup>

In fiscal year 2019-2020, total enrollment in the schools required to comply with the mandate is 3,404,015.<sup>49</sup>

These reports, however, do not identify enrollment by grade level or by the number of *female* students in grades six to 12 in schools required to comply with the mandate.

Thus, to determine the estimated number of female pupils in grades six to 12 in the schools mandated to comply with the program, we calculate the percentage of total statewide enrollment comprised of female pupils in grades six to 12 in fiscal years 2017-2018, 2018-2019, and 2019-2020, and then multiply that percentage by the total enrollment in the schools required to comply with the mandate as follows:

Fiscal Year	Total Statewide Enrollment	Statewide Female Enrollment in Grades 6 to 12	Percentage of Total Statewide Enrollment Comprised of Females in Grades 6-12	Total Enrollment in Schools Required to Comply with the Mandate	Estimated Number of Female Pupils in Grades 6 to 12 in Schools Required to Comply with the Mandate (i.e. 27% of total enrollment)
2017-2018	6,220,413 <sup>50</sup>	1,650,276 <sup>51</sup>	27%	3,475,098	938,276

<https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>48</sup> Exhibit G, California Department of Education, 2018-2019 (Filtered) Unduplicated Student Poverty - Free and Reduced Price Meals Data (XSLX; 2MB; Posted 28-Mar-2019), <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>49</sup> Exhibit G, California Department of Education, 2019-2020 (Filtered) Unduplicated Student Poverty - Free and Reduced Price Meals Data (XSLX; 2MB; Posted 13-Apr-2020) <https://www.cde.ca.gov/ds/sd/sd/filessp.asp> (accessed on July 2, 2020).

<sup>50</sup> Exhibit G, California Department of Education, DataQuest, 2017-2018 Statewide Enrollment by Grade (with county data), <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdLevels.aspx?cds=00&aggllevel=state&year=2017-18> (accessed on July 2, 2020).

<sup>51</sup> Exhibit G, California Department of Education, DataQuest, Female Statewide Enrollment Multi-Year Summary by Grade, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdYears.aspx?cds=00&aggllevel=state&year=2019-20> (accessed on July 2, 2020).

Fiscal Year	Total Statewide Enrollment	Statewide Female Enrollment in Grades 6 to 12	Percentage of Total Statewide Enrollment Comprised of Females in Grades 6-12	Total Enrollment in Schools Required to Comply with the Mandate	Estimated Number of Female Pupils in Grades 6 to 12 in Schools Required to Comply with the Mandate (i.e. 27% of total enrollment)
2018-2019	6,186,278 <sup>52</sup>	1,647,704 <sup>53</sup>	27%	3,424,969	924,742
2019-2020	6,163,001 <sup>54</sup>	1,646,066 <sup>55</sup>	27%	3,404,015	919,084

Thus, the estimated number of female pupils in grades 6 through 12 in the schools mandated to comply with the program is assumed to be 938,276 for fiscal year 2017-2018; 924,742 for fiscal year 2018-2019; and 919,084 for 2019-2020, and these estimates are used throughout this Statewide Cost Estimate.

- *The estimated cost of feminine hygiene products could increase if each pupil enrolled in grades six to 12 uses three products per day for five days a week for each month of the school year, or 138 products per pupil per year, assuming each product costs \$.11 per pupil.*

The actual number of products needed per year and the annual cost of tampons and sanitary napkins per pupil is unknown. However, based on the following information, it is estimated that each female pupil in grades six through 12 could use 138 products per school year.

Education Code section 46100 provides that the “governing board of each school district shall, subject to the provisions of this chapter, fix the length of the school day for the several grades

<sup>52</sup> Exhibit G, California Department of Education, DataQuest, 2018-2019 Statewide Enrollment by Grade (with county data), <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdLevels.aspx?cds=00&aggllevel=state&year=2018-19> (accessed on July 2, 2020).

<sup>53</sup> Exhibit G, California Department of Education, DataQuest, Female Statewide Enrollment Multi-Year Summary by Grade, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdYears.aspx?cds=00&aggllevel=state&year=2019-20> (accessed on July 2, 2020).

<sup>54</sup> Exhibit G, California Department of Education, DataQuest, 2019-2020 Statewide Enrollment by Grade (with county data), <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdLevels.aspx?cds=00&aggllevel=state&year=2019-20> (accessed on July 2, 2020).

<sup>55</sup> Exhibit G, California Department of Education, DataQuest, Female Statewide Enrollment Multi-Year Summary by Grade, <https://dq.cde.ca.gov/dataquest/dqcensus/EnrGrdYears.aspx?cds=00&aggllevel=state&year=2019-20> (accessed on July 2, 2020).

and classes of the schools maintained by the district.” However, as a condition of apportionment, each school shall offer 180 school days per year and is required to maintain the following minimum number of instructional minutes in a school year: 54,000 minutes for grades four to eight, and 64,800 minutes for grades nine through 12.<sup>56</sup> However, recess, lunch, and other breaks are not included as instructional time and are assumed to account for an average of an additional hour per day. With these numbers, it is estimated that the average school day for grades six through eight is six hours<sup>57</sup> and the average school day for grades nine through 12 is seven hours.<sup>58</sup> However, with after-school activities, especially in middle school and high school, the hours when pupils are on campus and the restrooms remain open may be longer than six or seven hours per day.

According to the Food and Drug Administration (FDA) and Planned Parenthood, tampons should be changed every four to eight hours, or as often as needed to prevent toxic shock syndrome.<sup>59</sup> Sanitary pads should be changed at least every three or four hours.<sup>60</sup> Therefore, assuming a six to seven hour school day, it is estimated that a sufficient amount of product used by female students in grades six through 12 could be three products for each day for five days each month during a school year.<sup>61</sup>

Generally, California schools have set their academic calendars to begin sometime in August and conclude sometime in June. Thus, it is estimated that each female pupil in grades six through 12 could need approximately 138 products per full school year in fiscal years 2018-2019 and 2019-2020 (three products per day for five days equal 15 products per month, multiplied by 9.2 months, totals 138), and half that amount, or 69 products per pupil is estimated, for fiscal year 2017-2018, since the program was effective beginning January 1, 2018.

The total cost of feminine hygiene products can vary depending on the vendor and the product

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<sup>56</sup> Education Code section 46200 et seq., 46207.

<sup>57</sup> 54,000 minutes divided by 60 minutes equals 900 hours per year; 180 minimum days per year divided by 900 hours per year equals five hours per day for grades six through eight.

<sup>58</sup> 64,800 minutes divided by 60 minutes equals 1080 hours per year; 1,080 hours divided by 180 minimum days per year equals six hours per day, plus one hour for lunch, recess and other breaks equal seven hours per day for grades nine through 12.

<sup>59</sup> Exhibit G, *The Facts on Tampons – and How to Use Them Safely*, Federal Food and Drug Administration, <https://www.fda.gov/consumers/consumer-updates/facts-tampons-and-how-use-them-safely> (accessed on June 29, 2020); *How do I use tampons, pads, period underwear, and menstrual cups?*, Planned Parenthood, <https://www.plannedparenthood.org/learn/health-and-wellness/menstruation/how-do-i-use-tampons-pads-and-menstrual-cups> (accessed on July 1, 2020).

<sup>60</sup> Exhibit G, *Kids Health, Pads and Tampons*, Nemours, <https://kidshealth.org/en/kids/pads-tampons.html#:~:text=You%20might%20wonder%20how%20often,may%20get%20saturated%20more%20quickly> (accessed on June 29, 2020).

<sup>61</sup> Exhibit G, *Kids Health, All About Periods*, Nemours, “Periods usually last about 5 days. But a period can be shorter or last longer.” <https://kidshealth.org/en/teens/menstruation.html> (accessed on June 30, 2020).



purchased. However, the purchase orders provided in the Test Claim show that sanitary pads were purchased in a box of 250 pads at \$24.62 per box, which makes each pad roughly \$0.10 per pad; tampons were purchased in a box of 500 at \$52.50 per box, which makes each tampon roughly \$0.11 per tampon.<sup>62</sup> Two of the reimbursement claims filed with the Controller's Office include invoices that are consistent with these estimates. For example, ABC Unified School District attached an invoice to its fiscal year 2017-2018 reimbursement claim showing a purchase of 1,000 tampons at \$103, or \$.10 per tampon.<sup>63</sup> An invoice attached to the claim filed by Anaheim Union High School District shows the purchase of 250 sanitary pads at \$27.51, or \$.11 per pad.<sup>64</sup>

At \$0.11 per product, the cost of tampons and sanitary napkins for each pupil in fiscal year 2017-2018 can reach \$7.59 (if each pupil uses an estimated 69 products from January 1, 2018, to June 30, 2018 multiplied by \$0.11 equal \$7.59), and \$15.18 per pupil for a full fiscal year beginning in fiscal year 2018-2019 (if each pupil uses an estimated 138 products per year multiplied by \$0.11 equals \$15.18). This amount does not account for the labor costs to purchase and stock the product.

Thus, if all female pupils in grades six to 12 in the schools required to comply with the mandate use 69 products in fiscal year 2017-2018, and use 138 products in a full fiscal year beginning 2018-2019, total statewide costs of the feminine hygiene products could increase as follows:

FY 2017-2018 - \$7.59 x 938,276 estimated statewide enrollment of female pupils in grades six to 12 in schools required to comply with the mandate = \$7,121,515

FY 2018-2019 - \$15.18 x 924,742 estimated statewide enrollment of female pupils in grades six to 12 in schools required to comply with the mandate = \$14,037,584

FY 2019-2020 - \$15.18 x 919,084 estimated statewide enrollment of female pupils in grades six to 12 in schools required to comply with the mandate = \$13,951,695

However, as discussed below, the actual costs claimed for feminine hygiene products in the initial claims is far lower than these estimates, although the documentation does support the estimated cost per product. There are several reasons why this might be the case including but not limited to the possibility that the schools have not been actually providing a *sufficient* number of feminine hygiene products *at all times*, many of the female pupils may have and prefer to use their own feminine hygiene products based on brand preference, or other reasons, and so fewer of the products being provided by the schools are actually being used, or, pupils may be using fewer feminine hygiene products than the number recommended by the FDA and Planned Parenthood.

- *Although a sufficient number of suitable dispensers to comply with the mandate is unknown, and will vary by school district, it is assumed that the dispensers purchased*

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<sup>62</sup> Exhibit A, Test Claim, filed December 7, 2018, page 25.

<sup>63</sup> Exhibit G, Purchase Order, ABC Unified School District, 2017-2018 Reimbursement Claim.

<sup>64</sup> Exhibit G, Purchase Order, Anaheim Union High School District, 2017-2018 Reimbursement Claim.

*and retrofitted during the initial period of reimbursement was determined to be the number necessary and sufficient to comply with the mandate.*

A sufficient number of dispensers to comply with the mandate is unknown. The Parameters and Guidelines state that “[t]he sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.”<sup>65</sup> The Test Claim Decision found that a “restroom” is commonly understood as “a room or suite of rooms in a public space provided with lavatory, toilet, and other facilities . . .”<sup>66</sup> Accordingly, no matter how many lavatories or toilets are in a room or suite of rooms, the mandate is to stock with feminine hygiene products in 50 percent of the rooms provided for that purpose at a school site. If a school has two sets of restrooms, one for men or boys and one for women or girls, it would be required to stock one restroom with tampons and sanitary napkins – and that would be the one for women or girls consistent with the spirit of the law. Likewise, if the school had 10 restrooms, five for men or boys and five for women or girls, it would be required to stock five restrooms. In addition, CDE recommends that separate toilets be provided for staff for safety and liability reasons.<sup>67</sup>

Based on the requirement “to stock 50 percent of the restrooms with feminine hygiene products at all times,”<sup>68</sup> there are enough dispensers in 50 percent of the restrooms if they can hold a sufficient number of products to make feminine hygiene products available at all times. Dispensers generally hold between 12 and 15 sanitary napkins or pads, and 19 and 22 tampons.<sup>69</sup> A school may choose to place multiple dispensers in each restroom required to be stocked, if it determines that multiple dispensers are necessary for the school to comply with the mandate to stock the feminine hygiene products at all times. If restrooms are stocked multiple times a day, fewer dispensers per restroom would be required. However, if they are only stocked one or two times per day, more dispensers might be necessary, especially in multi-stall restrooms in larger schools.

The reimbursement claims and the Controller’s Summary of Claims identify the number of schools required to comply with the mandate, the number of restrooms in each school required to

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<sup>65</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 26.

<sup>66</sup> Exhibit B, Test Claim Decision, adopted May 24, 2019, page 13.

<sup>67</sup> Exhibit G, California Department of Education, K-12 Toilet Requirement Summary – School Facility Design, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp#:~:text=California%20Code%20of%20Regulations%2C%20Title,or%20in%20the%20kindergarten%20complex.&text=CDE%20recommends%20that%20the%20location,the%20campus%20to%20ensure%20access> (accessed January 23, 2020).

<sup>68</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 25.

<sup>69</sup> Exhibit G, Google search for feminine hygiene dispensers, [https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF\\_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKewj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAGMECs&biw=1920&bih=969](https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKewj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAGMECs&biw=1920&bih=969) (accessed on July 1, 2020).

be stocked with feminine hygiene products, and the total number of dispensers purchased or retrofitted to comply with the mandate. For fiscal year 2017-2018, 923 schools were identified by the claimants as having to comply with the mandate.<sup>70</sup> The Controller's Summary of Claims identifies 9,494 restrooms that were required to be stocked with feminine hygiene products.<sup>71</sup> This number of restrooms needs to be adjusted, however, because the Controller's Summary of Claims for 2017-2018 transposes numbers identified by Little Lake City School District. The Controller's Summary of Claims states that Little Lake City School District reported 750 restrooms.<sup>72</sup> However, Little Lake City School District actually reported seven restrooms (for two schools required to comply with the mandate), a difference of 743 restrooms.<sup>73</sup> Deducting 743 restrooms from the total number of restrooms identified in the Controller's Summary of Claims results in 8,751 restrooms required to be stocked with feminine hygiene products in 2017-2018. In addition, a total of 8,187 dispensers were purchased and installed.<sup>74</sup> Thus, based on the claims data, the schools have an average of nine and a half restrooms each that are required to be stocked with feminine hygiene products (8,751 restrooms divided by 923 schools = 9.5 restrooms per school); and the claimants purchased and installed almost one dispenser per restroom to comply with the mandate (8,187 dispensers divided by 8,751 restrooms = .9 dispensers per restroom) in fiscal year 2017-2018.

Although it can be presumed that each of the restrooms required to be stocked now has at least one dispenser in place and able to comply with the mandate, the claims data does not identify how many dispensers were already in place and able to comply with the mandate without any retrofitting at all. As indicated in the Parameters and Guidelines, reimbursement to purchase and install new dispensers is required only to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate.<sup>75</sup>

For fiscal year 2018-2019, 891 schools identified as having to comply with the mandate claimed costs to stock 7,547 restrooms with feminine hygiene products;<sup>76</sup> and 871 dispensers were purchased or retrofitted by these schools to comply with the mandate.<sup>77</sup> Most of the school

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<sup>70</sup> Exhibit G, Excerpt, List of Schools from 2017-2018 Reimbursement Claims.

<sup>71</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 8.

<sup>72</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 5.

<sup>73</sup> Exhibit G, Excerpt from Little Lake City School District's 2017-2018 Reimbursement Claim, page 2. Female enrollment in grades six to 12 was reported as 750 pupils.

<sup>74</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 8. Although 15 dispensers were identified as having been retrofitted in fiscal year 2017-2018 by Little Lake City School District to comply with the mandate, the reimbursement claim filed by Little Lake City School District shows that the district purchased and installed 15 dispensers. (Exhibit G, Excerpt from Little Lake City School District's 2017-2018 Reimbursement Claim, page 2.)

<sup>75</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, pages 24-25.

<sup>76</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 12; Exhibit G, Excerpt, List of Schools from 2018-2019 Reimbursement Claims.

<sup>77</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 12. Although

districts that filed claims for 2017-2018 also filed claims for 2018-2019, and reported roughly the same number of restrooms required to be stocked with feminine hygiene products in the second year of claiming.<sup>78</sup> But the number of dispensers purchased or retrofitted per restroom decreased significantly in the second year of the mandate: 89 percent fewer dispensers were claimed in 2018-2019 compared to the prior year (871 divided by 8,187 dispensers = 11%).

Accordingly, although a sufficient number of dispensers to comply with the mandate statewide is not known, and will vary by school district, it is assumed that the dispensers purchased and retrofitted during the initial period of reimbursement (8,187 in 2017-2018<sup>79</sup> and 871 in 2018-2019<sup>80</sup>) was determined to be the number necessary and sufficient for the schools for which costs were claimed to comply with the mandate.

- *The future annual costs for Activity B. will likely decrease after the initial claiming period once a sufficient number of dispensers have been purchased and installed or retrofitted or repaired to comply with the mandate.*

The Commission found that “[r]eimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.”<sup>81</sup> Thus, schools will either retrofit or repair, or purchase and install new dispensers, whichever is more cost effective to comply with the mandate. Once the schools have a sufficient number of coin-free dispensers purchased and installed or retrofitted, however, future costs will likely decrease.

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120 dispensers were identified as having been retrofitted in fiscal year 2018-2019 to comply with the mandate, only the costs for three dispensers were specifically claimed for this activity.

<sup>78</sup> See Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 1-3. There are some minor differences, however. For example, ABC Unified School District identified 142 restrooms required to be stocked with feminine hygiene products in 2017-2018 and 143 restrooms in 2018-2019. (Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 4, 9.) Antelope Valley Union High School District identified 274 restrooms required to be stocked with feminine hygiene products in 2017-2018 and 273 restrooms in 2018-2019. (Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 4, 9.) Sacramento Unified School District identified 274 restrooms required to be stocked with feminine hygiene products in 2017-2018 and 262 restrooms in 2018-2019. (Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, pages 6, 11.)

<sup>79</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 8. Although 15 dispensers were identified as having been retrofitted in fiscal year 2017-2018 by Little Lake City School District to comply with the mandate, the reimbursement claim filed by Little Lake City School District shows that the district purchased and installed 15 dispensers. (Exhibit G, Excerpt from Little Lake City School District’s 2017-2018 Reimbursement Claim, page 2.)

<sup>80</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 12. Although 120 dispensers were identified as having been retrofitted in fiscal year 2018-2019 to comply with the mandate, only the costs for three dispensers were specifically claimed for this activity.

<sup>81</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, pages 24-25.

The claims data shows an 89 percent decrease in the number of dispensers purchased and installed or repaired or retrofitted in the second year of the mandate. The useful life span of a metal dispenser is estimated at approximately 10 years, if considered as “machinery and equipment.”<sup>82</sup> However, according to a sanitary maintenance industry magazine article, feminine hygiene “[d]ispensers typically last 20 or more years with very minimal maintenance.”<sup>83</sup> The article also indicates theft and vandalism of the dispensers may occur.<sup>84</sup>

Thus, while dispensers will need repair or replacement if vandalized or stolen, it is expected that ongoing costs to purchase or repair dispensers will significantly decrease following the initial reimbursement period. Assuming a 10-year useful lifespan, it is assumed that ongoing annual costs for Activity B. will be approximately 10 percent of the annual costs for the initial claim period.

### **Estimated Costs and Cost Factors for Each Reimbursable Activity**

For the purpose of estimating statewide costs incurred for this program during the initial reimbursement period and the following years, the annual cost of each reimbursable activity has been estimated based on the assumptions discussed above.

#### **A. Activity A.: Stock 50 Percent of the School’s Restrooms with Feminine Hygiene Products (Defined only as Tampons and Sanitary Napkins) at All Times at No Cost to Pupils.**

Activity A. requires schools to stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

*Based on the assumptions and methodology discussed herein, the estimated statewide cost for Activity A., for the initial reimbursement period is estimated to be between \$664,260 and \$2,610,841. The cost for fiscal year 2019-2020 and following is estimated to be between \$444,784 to \$1,746,260, plus the implicit price deflator.*

FY 2017-2018 and 2018-2019:

\$664,260 = (costs actually claimed for Activity A. in the unaudited claims filed for the initial reimbursement period) to \$2,610,841= (costs actually claimed for Activity A. in the unaudited claims filed for the initial reimbursement period plus all potential costs that may be claimed for this activity in late or amended claims filed by school districts with schools required to comply with the mandate).

FY 2019-2020 and following:

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<sup>82</sup> Exhibit G, *Estimated Useful Life and Depreciation of Assets*, AssetWorks, <https://www.assetworks.com/useful-life-and-depreciation/> (accessed on August 12, 2020).

<sup>83</sup> Exhibit G, *Feminine Hygiene: The Untapped Market*, Clean Link, posted June 3, 2009, <https://www.cleanlink.com/sm/article/Feminine-Hygiene-The-Untapped-Market--11000> (accessed September 29, 2020), page 3.

<sup>84</sup> Exhibit G, *Feminine Hygiene: The Untapped Market*, Clean Link, posted June 3, 2009, <https://www.cleanlink.com/sm/article/Feminine-Hygiene-The-Untapped-Market--11000> (accessed September 29, 2020), page 3.

\$444,784 to \$1,746,260, plus the implicit price deflator = (The low end of the range assumes costs will continue to be claimed only by those school districts that filed claims in the initial reimbursement period, adjusted by a one percent decline in enrollment. The high estimate assumes that costs will be claimed by all California school districts with schools required to comply with the mandated program).

1. *The statewide cost for Activity A. for the initial reimbursement period is estimated at \$664,260 - \$2,610,841.*

For the initial reimbursement period (one and one half fiscal years), 115 school districts filed a total of 151 reimbursement claims for costs totaling \$664,260 to stock 50 percent of the schools' restrooms with feminine hygiene products (\$207,989 for 2017-2018 and \$456,271 for 2018-2019).<sup>85</sup>

As discussed above, it is assumed that in fiscal year 2017-2018 (with the mandate beginning January 1, 2018) a sufficient amount of tampons and sanitary napkins necessary to comply with the mandate is 69 products per female pupil in grades six to 12, and 138 products per female pupil in grades six to 12 in fiscal year 2018-2019. The Parameters and Guidelines and the Controller's claiming instructions requested the claimants to identify the total enrollment of female pupils in grades six to 12 in each school subject to the mandate and the total amount of feminine hygiene products purchased for each claim year. However, not all school districts that claimed costs for Activity A. identified these factors, and many claims only identified the total cost of the feminine hygiene products but not the amount purchased. Thus, the actual number of products used by female pupils during the initial reimbursement period cannot be calculated based on the claims data.

Since the claims data does not indicate how many products were purchased or used per pupil during the initial reimbursement period, and the costs of the product may vary, a better estimate of statewide costs can be determined by using the average cost claimed per pupil enrolled in grades six to 12 in the schools that claimed costs for Activity A. (which includes material and labor costs).

For fiscal year 2017-2018, the Controller's Summary of Claims states that \$207,989 was claimed for Activity A. by 84 school districts with 249,980 female pupils in grades six to 12.<sup>86</sup> However, to determine a per pupil amount, these numbers need to be adjusted. First, the \$2,725 in costs claimed for Activity A. by Merced City School District, are deducted from the total costs claimed for Activity A. because this school district did not report female enrollment.<sup>87</sup> This leaves the total costs claimed for Activity A. in fiscal year 2017-2018 at \$205,264.

In addition, the following school districts claimed no costs for Activity A. in fiscal year 2017-2018: Anaheim Union High School District (with 10,244 female pupils in grades six through

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<sup>85</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 8, 12.

<sup>86</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 8.

<sup>87</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 6. Please note that the Controller's Summary of Claims identifies this district as "Merced Elementary School District," but the reimbursement claim identifies the district as "Merced City School District." This analysis uses "Merced City School District," since that is the name of the district.

12), Center Joint Unified School District (with 1,153 female pupils in grades six through 12), Ceres Unified School District (with 3,078 female pupils in grades six through 12), Coachella Valley Unified School District (with 762 female pupils in grades six through 12), Cucamonga Unified School District (with 374 female pupils in grades six through 12), Oroville City Elementary School District (with 351 female pupils in grades six through 12), and West Contra Costa Unified School District (with 2,327 female pupils in grades six through 12).<sup>88</sup> Thus, the population of female pupils in grades six through 12 reported by these districts (18,289) is excluded from the population count identified in the Controller's Summary of Claims.

Finally, the Controller's Summary of Claims for 2017-2018 transposes numbers identified and claimed by Little Lake City School District. The Controller reports that Little Lake City had 7,403 female pupils enrolled in grades six through 12, had 750 total restrooms, and claimed costs for Activity A. totaling \$728.<sup>89</sup> However, a review of the fiscal year 2017-2018 reimbursement claim filed by Little Lake City shows that 7,403 was the total dollar amount claimed for that year; and that total female enrollment in grades six through 12 was 750.<sup>90</sup> Thus, to account for Little Lake City, female pupils enrolled in grades six through 12 in fiscal year 2017-2018 was adjusted by 6,653 pupils (7,403 shown in Controller's Summary of Claims, less 750 actual enrollment = 6,653). With these adjustments, the female enrollment in grades six through 12 in the school districts that claimed costs for Activity A. totals 225,038 (249,980 minus 18,289 = 231,691, minus 6,653 enrollment adjustment for Little Lake City = 225,038).

Thus, for fiscal year 2017-2018, per pupil costs for Activity A. amounts to \$.91 as follows: \$205,264 (total costs claimed, except for Merced City School District) divided by 225,038 females enrolled in grades six through 12 in the districts that claimed costs = \$.91 per pupil enrolled in grades six to 12 in the school districts that claimed costs for Activity A.

At \$.91 per pupil, total statewide costs could be as high as \$853,831 in fiscal year 2017-2018 if all school districts in California with schools required to comply with the mandate claim costs for Activity A. (\$.91 multiplied by 938,276 total estimated female pupils enrolled in grades six through 12 in schools required to comply with the mandate = \$853,831).

Therefore, for fiscal year 2017-2018, statewide costs for Activity A. to stock 50 percent of the school's restrooms with feminine hygiene products at all times at no cost to pupils, ranges from \$207,989 (costs claimed to date) to \$853,831.

Similarly, for fiscal year 2018-2019, \$456,271 was claimed for Activity A. by 67 school districts. The Controller's summary report specifies the total enrollment of female pupils in grades six to 12, as identified in the claims data for fiscal year 2018-2019, to be 243,807.<sup>91</sup> However, to determine an average cost per pupil for Activity A., the data for school districts that did not report female enrollment in grades six-12 and data for schools that did not claim costs for Activity A. are also excluded. Merced City School District is excluded since it did not report

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<sup>88</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 4-8.

<sup>89</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 5.

<sup>90</sup> Exhibit G, Excerpt from Little Lake City School District's 2017-2018 Reimbursement Claim, page 2.

<sup>91</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 12.

female enrollment and therefore the costs for the 66 school districts who did claim for Activity A. is reduced by the \$7,704 costs claimed by Merced City ( $\$456,271 - \$7,704 = \$448,567$ ).<sup>92</sup> In addition, the data for the following districts that did not claim costs for Activity A. for fiscal year 2018-2019 are excluded from this calculation: Jurupa Unified School District (4,821 female pupils in grades six through 12); Santa Cruz (988 female pupils in grades six through 12); and Westside Union Elementary School District (1,536 female pupils in grades six through 12).<sup>93</sup> With these adjustments, the female enrollment in grades six through 12 in the school districts that claimed costs for Activity A. in fiscal year 2018-2019 totals 236,462 ( $243,807 - 7,345 = 236,462$ ).

Thus, for fiscal year 2018-2019, the per pupil cost for Activity A. amounts to \$1.90 as follows:  $\$448,567$  (total costs claimed by the 66 districts that included the number of female pupils in grades six through 12) divided by 236,462 females enrolled in grades six through 12 in the districts that claimed costs = \$1.90 per pupil. It is noteworthy that this represents the estimated cost for less than 18 products per female pupil in grades six through 12 per year (at 11 cents per product, and not accounting for any labor costs), which is far fewer than the estimated 138 products per year that a pupil is estimated to need during school hours over the course of a fiscal year according to FDA and Planned Parenthood recommendations.

At \$1.90 per female pupil in grades six through 12, total statewide costs could be as high as \$1,757,010 for fiscal year 2018-2019 if all school districts in California with schools required to comply with the mandate claim costs for Activity A. ( $\$1.90$  multiplied by 924,742 total estimated female pupils enrolled in grades six through 12 in schools required to comply with the mandate = \$1,757,010).

Therefore, for fiscal year 2018-2019, statewide costs for Activity A. to stock 50 percent of the school's restrooms with feminine hygiene products at all times at no cost to pupils, ranges from \$456,271 (costs claimed to date) to \$1,757,010.

2. *The estimated future annual cost for Activity A. is \$444,784 to \$1,746,260, plus the implicit price deflator beginning fiscal year 2019-2020, and is expected to decrease slightly based on a projected one percent annual decline in enrollment from 2020-2021 through 2027-2028.*

As indicated above, a total of 115 school districts filed reimbursement claims with the State Controller's Office during the initial reimbursement period (97 for 2017-2018 and 72 for 2018-2019), and have identified costs incurred by a total of 1,140 schools within their districts, representing just 20 percent of the schools in the State estimated to be required to comply with this program. In addition, not all of the 115 school districts requested reimbursement for Activity A. for both 2017-2018 and 2018-2019; 84 districts claimed costs for Activity A. for fiscal year 2017-2018, and 67 school districts claimed costs for Activity A. for fiscal year 2018-2019. However, the enrollment of female pupils in grades six to 12 in the school districts that

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<sup>92</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 10. Please note that the Controller's Summary of Claims identifies this district as "Merced Elementary School District," but the reimbursement claim identifies the district as "Merced City School District." This analysis uses "Merced City School District," since this is the name of the district.

<sup>93</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 10-12.



filed reimbursement claims for Activity A. for fiscal year 2018-2019 and the cost of Activity A. per pupil for fiscal year 2018-2019 are higher than the enrollment and cost per pupil in fiscal year 2017-2018, primarily because the mandate was only in effect for the last half of fiscal year in 2017-2018. It is assumed that reimbursement claims for Activity A. will continue to be claimed in the future similarly to those claimed in fiscal year 2018-2019, except that female enrollment in those school districts is projected to decrease by one percent in fiscal year 2019-2020 (assuming a 1% decline of enrollment per year, based on Finance's projection that enrollment will decline by 7% between 2020-2021 and 2027-2028). Therefore, assuming that only the districts that filed claims during the initial claiming period continue to file claims, that the cost of Activity A. per pupil remains \$1.90, and that female enrollment in grades six to 12 in the school districts that continue to file claims in fiscal year 2019-2020 is 234,097 (236,462 - 2,365 = 234,097), then future costs for Activity A. are estimated at \$444,784, plus the implicit price deflator and will decrease with a one percent reduction in enrollment each year beginning 2020-2021.

However, if all school districts with schools required to comply with the mandate file reimbursement claims for Activity A. for fiscal year 2019-2020, then costs could increase to \$1,746,260, plus the implicit price deflator. As indicated above, the estimated number of female pupils in grades six through 12 in all California schools mandated to comply with the program is 919,084 for 2019-2020. If the cost per pupil to stock 50 percent of the schools' restrooms with feminine hygiene products remains at \$1.90 per pupil, then the estimated costs, beginning in fiscal year 2019-2020, is \$1,746,260, plus the implicit price deflator.

Accordingly, the estimated future annual costs beginning fiscal year 2019-2020 for Activity A. is \$444,784 to \$1,746,260, plus the implicit price deflator.

**B. Activity B.: Purchase and Install (or Retrofit or Repair) a Sufficient Number of Suitable Dispensers for Feminine Hygiene Products (Defined only as Tampons and Sanitary Napkins) in 50 Percent of the School's Restrooms.**

Activity B. provides ongoing reimbursement to purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms. The Parameters and Guidelines further state the following:

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

*Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, whichever is more cost effective.<sup>94</sup>*

Total costs claimed in the initial reimbursement period to purchase and install and repair

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<sup>94</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 26.

and retrofit dispensers is \$827,260 (\$826,309 to purchase and install 8,938 dispensers, and \$951 to retrofit three dispensers).

As recognized in the Parameters and Guidelines Decision, some schools may already be equipped with a sufficient number of suitable dispensers in their restrooms to comply with the mandate and, thus, would not need to incur increased costs to purchase new dispensers.<sup>95</sup> In addition, based on information publicly available, some schools may have existing dispensers, including coin dispensers, that can be repaired or modified to provide the feminine hygiene products at no cost to the pupils and at a fraction of the cost to purchase new dispensers.<sup>96</sup> Under these circumstances, it would only be necessary to repair or retrofit the dispensers to comply with the mandate, and would not be necessary to incur increased costs to buy all new dispensers.<sup>97</sup> The Parameters and Guidelines only allow reimbursement to purchase and install new dispensers if it is more cost effective than to retrofit or repair.<sup>98</sup>

It is assumed that the dispensers purchased and installed or retrofitted in the initial claim years was determined by the claimants to be the necessary number of dispensers sufficient to comply with the mandate to stock the product at all times at no cost to the pupils. It is further assumed that the annual cost to purchase and install, or retrofit and repair dispensers will decrease in future years to ten percent of the annual costs for the first year of the mandate 2017-2018.

***Based on the assumptions and methodology discussed herein, the total cost for Activity B., for the initial reimbursement period is estimated to be between \$827,260 and \$3,182,154. The cost for fiscal year 2019-2020 and following is estimated to be between \$82,726 and \$340,061, plus the implicit price deflator.***

FY 2017-2018 and 2018-2019:

\$827,260 = (Costs actually claimed for Activity B. in the unaudited timely filed claims for the initial reimbursement period) to \$3,182,154 = (Costs actually claimed for Activity B. in the unaudited timely filed claims for the initial reimbursement period plus all potential costs that may be claimed for this activity in late or amended claims filed by school districts with schools required to comply with the mandate).

FY 2019-2020 and following:

\$82,726 = (Assumes that only those districts that have already filed reimbursement claims will continue to claim 10% of the costs claimed for Activity B. for the initial claim period for fiscal year 2019-2020 and following) to \$340,061, plus the implicit price deflator = (Assumes that all school districts with schools required to comply with the mandate will claim 10% of the average cost of dispensers per pupil in the initial claiming period for fiscal year 2019-2020 and following).

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<sup>95</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 18.

<sup>96</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 18.

<sup>97</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 19.

<sup>98</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 26.

1. *The statewide costs for Activity B. (purchase and install [or retrofit or repair] dispensers) for the initial reimbursement period, fiscal years 2017-2018 and 2018-2019, is estimated to be between \$827,260 and \$3,182,154.*

For the initial claiming period, there were 125 claims submitted by 106 school districts for labor and material costs for 986 schools to comply with Activity B.1. to purchase and install dispensers totaling \$826,309 (\$683,908 for 2017-2018 and \$142,401 for 2018-2019).<sup>99</sup> The Controller's Summary of Claims shows that the costs of 8,187 dispensers were claimed for fiscal year 2017-2018, and 751 dispensers were claimed for fiscal year 2018-2019, representing a decrease of 92 percent in the number of dispensers claimed for the second year of the mandate.<sup>100</sup>

Also, for the initial claiming period, seven school districts indicated that they repaired or retrofitted a total of 120 dispensers, all in 2018-2019.<sup>101</sup> However, only one district, Santa Maria Joint Union High School District, properly claimed costs under activity B.2. to repair or retrofit three dispensers for a total of \$951 and all of the other district's costs were either not claimed, were claimed under another activity (such as under B.1.) or were not segregated by activity, as required.<sup>102</sup> Additionally, with respect to retrofitted dispensers, the Controller's Summary of Claims indicates that Santa Maria Joint Union High School District repaired three dispensers, and Santa Maria's claim form states that three dispensers were repaired.<sup>103</sup> The invoice attached to the claim form shows that 15 hours of labor were claimed for "Stainless Steel Dispensers Labor and additional welding" at a rate of \$58.50 per hour for a total of \$877.50, and three "3/16 x 1 304 SS Strip [stainless steel strips]" were claimed at \$22.53 each for a total of \$67.59, for

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<sup>99</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 8, 12. A total of only 106 school districts claimed costs for Activity B.1. in the initial claiming period: 88 for fiscal year 2017-2018 and 37 for fiscal year 2018-2019.

<sup>100</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 8, 12. Note that although the Controller's Summary of Claims Reported as of June 30, 2020 indicates that Little Lake City School District repaired or retrofitted 15 dispensers in fiscal year 2017-2018, Little Lake City's reimbursement claim indicates that those new Evogen dispensers were purchased and installed and not retrofitted and the costs were claimed under B.1., not B.2. (Excerpt from Little Lake City School District's 2017-2018 Reimbursement Claim, page 2.)

<sup>101</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 9-11 (The following districts indicated they repaired or retrofitted dispensers: Beaumont, Ceres, Riverdale, Santa Maria Joint Union High School District, Visalia, Vista, and Westside). Note that although the Controller's Summary of Claims Reported as of June 30, 2020 indicates that Little Lake City School District repaired or retrofitted 15 dispensers in fiscal year 2017-2018, Little Lake City's reimbursement claim indicates that those new Evogen dispensers were purchased and installed and not retrofitted and the costs were claimed under B.1., not B.2.

<sup>102</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 11.

<sup>103</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 11; Exhibit G, Excerpt from Santa Maria Joint Union High School District's 2018-2019 Reimbursement Claim, page 1.

grand total of \$950.50; the amount claimed by Santa Maria under Activity B.2.<sup>104</sup> And, as mentioned, none of the other six districts that, together with Santa Maria, indicated they retrofitted or repaired a total of 120 dispensers, correctly claimed costs for that activity under Activity B.2. Thus, we are limited to only Santa Maria's average cost of \$316.83 per unit to retrofit dispensers for purposes of this analysis. Unfortunately, due to a lack of data, it is unclear whether Santa Maria's costs are actually typical. And additionally, since they are the costs to retrofit rather than repair, it is unclear to what extent these costs would be reflective of future costs for repairs on existing dispensers which do not need to be retrofitted.

With \$827,260 in total costs claimed for the initial period of reimbursement to purchase and install (or retrofit or repair) a total of 9,058 dispensers (8,938 purchased and installed and 120 retrofitted or repaired), the average labor and material cost per dispenser during the initial claim period is \$91.33. This is less than expected since the test claimant's costs were \$157 to \$170 per unit, and regular retail prices for such dispensers range from as low as \$187.82 to \$800 or more.<sup>105</sup> Perhaps vendor discounts were provided and perhaps some of the costs to retrofit or repair (which may have been lower than costs incurred by Santa Maria) were inadvertently claimed under Activity B.1. instead of Activity B.2.

Overall, however, a total of 112 school districts identified 9,058 dispensers which were either purchased and installed or retrofitted or repaired during the initial claiming period.<sup>106</sup> And, because of the claiming issues and the uncertainty regarding whether it will be most cost effective to repair or to purchase and install dispensers as they become damaged, this analysis combines the costs for Activity B.1. and Activity B.2. for purposes of calculating the average cost per pupil for Activity B. to use for estimating the potential costs for late and amended initial claims and future costs.

As indicated above, it is estimated that 5,653 schools in fiscal year 2017-2018 and 5,630 schools in fiscal year 2018-2019 are required to comply with the mandate, and may still file late claims. The Parameters and Guidelines and claiming instructions require school districts to report the total number of restrooms in the schools required to comply with the mandate, and the number of dispensers purchased or retrofitted or repaired. Although there is no information about how many dispensers the schools already had and were able to use for this mandate, the number of dispensers repaired, retrofitted or purchased and installed provides some indication of how many dispensers the schools determined were sufficient to comply with the mandate and what the cost for those dispensers was.

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<sup>104</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 11; Exhibit G, Excerpt from Santa Maria Joint Union High School District's 2018-2019 Reimbursement Claim, page 1.

<sup>105</sup> Exhibit A, Test Claim, filed December 7, 2018, pages 21, 23 (Declaration of Jordan Aquino, Chief Business Officer, Desert Sands USD), and 26 (purchase order for the 2017-2018 purchase of dispensers); Exhibit G, Google search for feminine hygiene dispensers, [https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF\\_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKEwj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAgMECs&biw=1920&bih=969](https://www.google.com/search?q=ab+10+dispensers+for+feminine+hygiene+products&rlz=1C1CHBF_enUS891US891&source=univ&tbm=shop&tbo=u&sa=X&ved=2ahUKEwj-wOiTy-bpAhUWIDQIHdXXBwIQsxh6BAgMECs&biw=1920&bih=969) (accessed on July 1, 2020).

<sup>106</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, pages 4-12.

To estimate statewide costs for Activity B., the average cost claimed for Activity B. per female pupil enrolled in grades six through 12 in the school districts that filed reimbursement claims was multiplied by the estimated number of female pupils in grades six through 12 in schools statewide that are required to comply with the mandate. Thus, for fiscal year 2017-2018, the Controller's Summary of Claims shows that \$683,908 was claimed for Activity B. for 8,187 dispensers.<sup>107</sup> For fiscal year 2017-2018, the total enrollment of female pupils in grades six to 12 in the districts that filed reimbursement claims was 243,327.<sup>108</sup> With costs totaling \$683,908 claimed for Activity B. for fiscal year 2017-2018, a per pupil amount to purchase and install dispensers totals \$2.81 (\$683,908 divided by 243,327 = \$2.81).

At \$2.81 per pupil, total statewide costs could be as high as \$2,636,556 for fiscal year 2017-2018 if all school districts with schools required to comply with the mandate claim costs for Activity B. (\$2.81 multiplied by 938,276, total estimated female pupils enrolled in grades six through 12 in schools required to comply with the mandate in fiscal year 2017-2018). Therefore, for fiscal year 2017-2018, statewide costs for Activity B. range from \$683,908 to \$2,636,556.

Similarly, for fiscal year 2018-2019, the Controller's Summary of Claims shows that \$143,352 was claimed for Activity B. for 871 dispensers, and that the total enrollment of female pupils in grades six to 12 in the districts that filed reimbursement claims was 243,807. With \$143,352 claimed for Activity B. for fiscal year 2018-2019, a per pupil amount to purchase and install or repair or retrofit dispensers totals \$.59 (\$143,352 divided by 243,807 = \$.59).

At \$.59 per pupil, total statewide costs could be as high as \$545,598 for fiscal year 2018-2019 if all school districts in California with schools required to comply with the mandate claim costs for Activity B. (\$.59 multiplied by 924,742, total estimated female pupils enrolled in grades six through 12 in schools required to comply with the mandate in fiscal year 2018-2019.) Therefore, for fiscal year 2018-2019, the statewide cost for Activity B. is estimated to be between \$143,352 to \$545,598.

Accordingly, the statewide cost for Activity B. for the initial reimbursement period, fiscal years 2017-2018 and 2018-2019, is estimated to be between \$827,260 to \$3,182,154.

- 2. The estimated future annual costs beginning fiscal year 2019-2020 for Activity B. to maintain a sufficient number of dispensers to comply with the mandate, is estimated to be between \$82,726 and \$340,061, plus the implicit price deflator.*

As indicated in the assumptions above, it is expected that the costs for Activity B. (to purchase and install, or retrofit and repair a sufficient number of dispensers) will decrease significantly after the initial reimbursement period. The useful life span of a metal dispenser is estimated at 10 years and can last significantly longer, thus, the ongoing costs will be limited to minimal

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<sup>107</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 8.

<sup>108</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 6. Note that the Summary of Claims shows the enrollment of female pupils in grades six to 12 at 249,980 due to a transposing of the numbers for Little Lake City School District to indicate that there were 7,403 female pupils enrolled in grades six through 12, 750 restrooms required to be stocked, and costs for Activity A. of \$728, when actually it should say that there are 750 female pupils enrolled in grades six through 12, 728 restrooms, and cost of \$7,403 claimed for Activity A.

repairs or the occasional replacement if that is more cost effective.<sup>109</sup>

Given the estimated long life of a metal dispenser, and that school districts purchased and installed or retrofitted and repaired a sufficient number of dispensers to comply with the mandate in the initial years of the mandate, it is expected that costs claimed for Activity B. in future fiscal years to maintain a sufficient number of dispensers to comply with the mandate beginning in fiscal year 2019-2020 will decrease to ten percent of the total costs claimed for Activity B. in the initial reimbursement period. Thus, assuming that ten percent of the costs will be claimed in the future, that reimbursement claims for Activity B. will continue to be claimed by the same school districts that filed reimbursement claims for the initial claims years, and that the costs to purchase and install or retrofit or repair dispensers remains the same as the initial claim years, then future costs are estimated at \$82,726, plus the implicit price deflator (total costs of \$827,260 x 10% = \$82,726). The decrease in the number of dispensers claimed for under B. in the second claim year is consistent with and supports the assumption that once a sufficient number of dispensers have been retrofitted, repaired or purchased and installed, the on-going cost per pupil for repair or replacement will constitute approximately 10 percent of the cost per pupil to initially retrofit, repair, or purchase and install a sufficient number of dispensers.

However, if all school districts with schools required to comply with the mandate file reimbursement claims for Activity B. in fiscal year 2019-2020, then costs could increase to \$340,061, plus the implicit price deflator. As indicated above, the estimated number of female pupils in grades six through 12 in all schools mandated to comply with the program is estimated at 919,084 for 2019-2020. If the average cost claimed to purchase and install or retrofit and repair dispensers in the initial claiming period remains at \$91.33 per dispenser (\$827,260 total costs claimed for Activity B. divided by 9,058 dispensers purchased and installed or retrofitted and repaired); and that .04 dispensers per pupil is sufficient to comply with the mandate as determined by the school districts that claimed costs (9,058 total dispensers purchased and installed or retrofitted or repaired, divided by 243,807 female pupils enrolled in grades six to 12 in fiscal year 2018-2019 in the school districts that filed reimbursement claims)<sup>110</sup>; then the cost per pupil for a sufficient number of dispensers to comply with the mandate in the initial claiming period is \$3.65 (\$91.33 x .04). Assuming that future costs to maintain a sufficient number of dispensers to comply with the mandate is ten percent of the cost per pupil in the initial claiming period, the cost would be .37 cents per pupil (\$3.65 x .10). With 919,084 female pupils in grades six to 12 in all schools mandated to comply with the program in fiscal year 2019-2020, the high end of the cost range is estimated at \$340,061 to purchase and install, or retrofit or repair a sufficient number of dispensers to comply with the mandate in 2019-2020 and future years.

Accordingly, the statewide cost estimate for Activity B. for the fiscal years 2019-2020 and following, is estimated to be between \$82,726 and \$340,061.

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<sup>109</sup> Exhibit G, *Estimated Useful Life and Depreciation of Assets*, AssetWorks, <https://www.assetworks.com/useful-life-and-depreciation/> (accessed on August 12, 2020); Exhibit G, California School Accounting Manual, 2019, <https://www.cde.ca.gov/Fg/ac/sa/documents/csam2019complete.pdf> (accessed on August 12, 2020), page 2.

<sup>110</sup> Exhibit E, Controller's Summary of Claims Reported as of June 30, 2020, page 12.

### C. Indirect Costs

The Parameters and Guidelines authorize claimants to claim reimbursement for indirect costs as follows:

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

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

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.<sup>111</sup>

***Based on the assumptions and methodology discussed herein, the estimated indirect costs for the initial reimbursement period between \$56,750 to \$231,720, and for 2019-2020 and following is \$21,100 to \$83,453.***

FY 2017-2018 and 2018-2019:

\$56,750 to \$231,720 (The low estimate includes total indirect costs claimed in the unaudited timely filed reimbursement claims. The high estimate assumes indirect costs will be claimed by all California school districts with schools required to comply with the mandate at a rate of 4%).

FY 2019-2020 and following:

\$21,100 to \$83,453 (The low estimate assumes costs claimed in fiscal year 2018-2019 per pupil will continue to be claimed in future annual years, adjusted by a 1% decline in enrollment, and that indirect costs will continue to be claimed at an average rate of 4%. The high estimate assumes that the average direct cost per pupil claimed in fiscal year 2018-2019 will be claimed in 2019-2020 by all school districts with schools required to comply with the mandate and that the indirect costs of 4%, the average indirect cost rate claimed in the timely unaudited initial claims, are claimed).

- 1. The statewide indirect costs for the initial reimbursement period, fiscal years 2017-2018 and 2018-2019, are estimated to be between \$56,750 to \$231,720.*

During the initial period of reimbursement, fiscal years 2017-2018 and 2018-2019, \$56,750 was claimed as indirect costs, which constitutes an average indirect cost rate of four percent (\$56,750 divided by total direct costs of \$1,491,520 claimed for Activities A. and B.). If all school districts with schools required to comply with the mandate file late or amended reimbursement claims for fiscal years 2017-2018 and 2018-2019, then statewide indirect costs will increase.

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<sup>111</sup> Exhibit C, Decision and Parameters and Guidelines, adopted November 22, 2019, page 27.

This increase can be determined by calculating the average indirect cost rate claimed by the school districts that filed timely claims and multiplying that by the estimated direct costs of the program if all school districts with schools required to comply with the mandate filed reimbursement claims for fiscal years 2017-2018 and 2018-2019 ( $\$5,792,995 \times 4\% = \$231,720$ ).

Accordingly, statewide indirect costs for the initial reimbursement period, fiscal years 2017-2018 and 2018-2019, are estimated to be between \$56,750 and \$231,720.

2. *The estimated future annual statewide indirect costs beginning fiscal year 2019-2020 are estimated to be between \$21,100 and \$83,453.*

As indicated above, total estimated future annual statewide direct costs beginning fiscal year 2019-2020 are between \$527,510 (based on the assumption that the costs for Activities A. and B. will continue to be claimed in the future only by those school districts that filed claims in the initial reimbursement period, adjusted by a 1% decline in enrollment) and \$2,086,321 (assuming that the average direct cost per pupil claimed for Activities A. and B. in fiscal year 2018-2019 will be claimed in 2019-2020 by all school districts with schools required to comply with the mandated program). Assuming the average indirect cost rate remains at four percent, then future annual indirect costs are estimated to be between \$21,100 ( $\$527,510 \times 4\%$ ) and \$83,453 ( $\$2,086,321 \times 4\%$ ).

#### **D. Late Claim Penalties for Fiscal Years 2017-2018 and 2018-2019 Are Estimated to Be Between \$815 and \$448,460.**

Government Code section 17561(C)(3) states that “Any claim for initial reimbursement filed after the filing deadline shall be reduced by 10 percent of the amount that would have been allowed had the claim been timely filed.” In fiscal year 2017-2018, the Controller’s Summary of Claims shows that penalties amounting to \$523 were taken for the following late claims:

Enterprise Elementary School District - \$24 (.5% late claim penalty on \$4,170)<sup>112</sup>

Golden Plains Unified School District - \$331 (10% late claim penalty on \$3,310)<sup>113</sup>

Reef Sunset Unified School District - \$168 (10% late claim penalty on \$1,675)<sup>114</sup>

The late claim penalty imposed on Enterprise Elementary School District is unusual, since the amount is much less than the ten percent required to be taken pursuant to Government Code section 17561 and this claim was dated July 15, 2020, later than the other late claims - though perhaps there were extenuating circumstances.

For fiscal year 2018-2019, Golden Plains Unified School District received a late claim penalty of \$292, based on the \$2,921 claimed. Thus, during the initial claim period, late claim penalties totaled \$815.

As indicated above, the reimbursement claims filed by 115 school districts represents just 20 percent of the schools in the State estimated to be required to comply with this program during the initial period of reimbursement and, thus, late claims are likely to be filed. Thus, estimated

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<sup>112</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 4.

<sup>113</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 5.

<sup>114</sup> Exhibit E, Controller’s Summary of Claims Reported as of June 30, 2020, page 6.



late claim penalties are based on the estimated statewide direct and indirect costs for those school districts with schools required to comply with the mandate that may still file late or amended claims for the initial claiming period, less the costs that have been claimed, times ten percent, resulting in \$448,460 total estimated late claim penalties for fiscal years 2017-2018 and 2018-2019 (\$6,024,715 in estimated statewide direct and indirect costs that may yet be claimed - \$1,548,270 in costs claimed = \$4,476,445 x 10% = \$447,645 + \$815 in penalties already assessed).

Thus, late claim penalties for the initial reimbursement period are estimated between \$815-\$448,460.

### **Draft Proposed Statewide Cost Estimate**

On November 2, 2020, Commission staff issued the Draft Proposed Statewide Cost Estimate.<sup>115</sup> No comments were filed on the Draft Proposed Statewide Cost Estimate.

### **Conclusion**

On December 4, 2020, the Commission adopted this Statewide Cost Estimate of \$1,547,455 - \$5,576,255 for the initial reimbursement period of fiscal years 2017-2018 and 2018-2019, and the estimated cost for fiscal year 2019-2020 and following of \$548,610 - \$2,169,774 plus the implicit price deflator.

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<sup>115</sup> Exhibit F, Draft Proposed Statewide Cost Estimate, issued November 2, 2020.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

On December 9, 2020, I served the:

- **Statewide Cost Estimate adopted December 4, 2020**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6 as added by Statutes 2017, Chapter 687 (AB 10)

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 9, 2020 at Sacramento, California.



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

## Mailing List

**Last Updated:** 12/7/20

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

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

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

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