

ITEM 4
TEST CLAIM
PROPOSED DECISION

Education Code Section 35292.6
Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367)

Public School Restrooms: Menstrual Products

22-TC-04

Hesperia Unified School District, Claimant

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Filing Date:	RECEIVED May 12, 2023 <i>Commission on State Mandates</i>
TC #:	22-TC-04

TEST CLAIM FORM AND TEST CLAIM AMENDMENT FORM (Pursuant to Government Code section 17500 et seq. and Title 2, California Code of Regulations, section 1181.1 et seq.)

Section 1

Proposed Test Claim Title:

Public School Restrooms-Menstrual Products

Section 2

Local Government (Local Agency/School District) Name:

Hesperia Unified School District

Name and Title of Claimant’s Authorized Official pursuant to [CCR, tit.2, § 1183.1\(a\)\(1-5\)](#):

David Olney, Superintendent

Street Address, City, State, and Zip:

15576 Main Street, Hesperia, CA 92345

Telephone Number

760-244-4411

Email Address

david.olney@hesperiausd.org

Section 3 – Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be sent to this representative. Any change in representation must be authorized by the claimant in writing, and e-filed with the Commission on State Mandates. ([CCR, tit.2, § 1183.1\(b\)\(1-5\)](#).)

Name and Title of Claimant Representative:

Arthur Palkowitz

Organization: Law Offices of Arthur Palkowitz

Street Address, City, State, Zip:

12807 Calle de la Siena

Telephone Number

858-259-1055

Email Address

law@artpalk.onmicrosoft.com

Section 4 – Identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to [Government Code section 17553](#) and check for amendments to the section or regulations adopted to implement it:

Assembly Bill No. 367

Statutes 2021, Chapter 664, Sections 1, 3

Education Code Section 35292.6

Effective Date: January 1, 2022

Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 05 / 12 / 2023

A: Which is not later than 12 months (365 days) following [insert effective date] / / , the effective date of the statute(s) or executive order(s) pled; or

B: Which is within 12 months (365 days) of [insert the date costs were *first* incurred to implement the alleged mandate] 07 / 01 / 2022, which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

([Gov. Code § 17551\(c\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\)](#) and [1187.5.](#))

Section 5 – Written Narrative:

Includes a statement that actual or estimated costs exceed one thousand dollars (\$1,000). ([Gov. Code § 17564.](#))

Includes all of the following elements for each statute or executive order alleged **pursuant to [Government Code section 17553\(b\)\(1\)](#)**:

Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;

Following FY: 2023 - 2024 Total Costs: \$5,000,000.00

Identifies all dedicated funding sources for this program;

State: California

Federal: None

Local agency's general purpose funds: Yes. General Funds

Other nonlocal agency funds: None

Fee authority to offset costs: None

Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: _____

Test Claim 18-TC-01, Public School Restrooms Feminine Hygiene Products was approved by the Commission on State Mandates as a reimbursable mandate. Williams Cost Implementation I, II, III; 05-TC-04; 07-TC-06; 08-TC-01.

Identifies any legislatively determined mandates that are on, or that may be related to, the same statute or executive order: None

Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to [Government Code Section 17553\(b\)\(2\)](#) and [California Code of Regulations, title 2, section 1187.5](#), as follows:

Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.

Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).

If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to [Government Code section 17573](#), and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of [Government Code section 17574](#).

The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to [Government Code section 17553\(b\)\(3\)](#) and [California Code of Regulations, title 2, § 1187.5](#):

The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate.
Pages PSR Menstrual 026 to PSR Menstrual 029.

Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages N/A to N/A.

- Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages N/A to N/A.
- Evidence to support any written representation of fact. *Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.)*
Pages PSR Menstrua to PSR Menstrual 25.

Section 8 – TEST CLAIM CERTIFICATION Pursuant to [Government Code section 17553](#)

- The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to [California Code of Regulations, title 2, section 1183.1\(a\)\(1-5\)](#) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in [section 1183.1\(a\)\(1-5\)](#) of the Commission’s regulations, and not by the representative.

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of [article XIII B, section 6 of the California Constitution](#) and [Government Code section 17514](#). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission’s regulations. ([Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.](#))

David Olney

Name of Authorized Local Government Official
 pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)

Superintendent

Print or Type Title

David A. Olney
David A. Olney (Jun 8, 2023 16:25 PDT)

Signature of Authorized Local Government Official
 pursuant to [Cal. Code Regs., tit.2, § 1183.1\(a\)\(1-5\)](#)










Test Claim Form

Final Audit Report

2023-06-08

Created:	2023-06-08
By:	CSM Sign (csmsign@csm.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_fYHBwz1mMX6CbKNaWj2QJJeUPTTTnli

"Test Claim Form" History

-  Document created by CSM Sign (csmsign@csm.ca.gov)
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-  Document emailed to Arthur Palkowitz (law@artpalk.onmicrosoft.com) for filling
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-  Document emailed to david.olney@hesperiausd.org for signature
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-  Email viewed by david.olney@hesperiausd.org
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-  Signer david.olney@hesperiausd.org entered name at signing as David A. Olney
2023-06-08 - 11:25:22 PM GMT
-  Document e-signed by David A. Olney (david.olney@hesperiausd.org)
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-  Agreement completed.
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Test Claim: Public School Restrooms
Menstrual Products
Claimant: Hesperia Unified School District
5. Written Narrative

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

Test Claim of:

Hesperia Unified School District
Claimant

No. CSM _____

Public School Restrooms
Menstrual Products
Assembly Bill No. 367
Statutes 2021, Chapter 664, Sections 1, 3
Education Code Section 35292.6

Effective Date: January 1, 2022

STATEMENT OF THE CLAIM

This test claim filed by claimant Hesperia Unified School District (“Claimant”) alleges reimbursable costs mandated by the State for school districts to stock the school's restrooms with free menstrual (“feminine hygiene”) products at all times pursuant to the requirements in Statutes 2021 Chapter 664, A.B. No. 367, Section 3 and Education Code Section 35292.6.

This legislation would also require posting a designated notice. By imposing additional requirements on public schools this bill would impose a state-mandated local program due to the related increased costs that will be incurred.

Claimant alleges that the test claim statutes impose a reimbursable state mandated program for school districts under Article XIII B, section 6 and Government Code section 17514. (2 CCR § 1183.1)

AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority, pursuant to Government Code section 17551, subdivision (a), to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the State for costs mandated by the State, as required by section 6 of Article XIII B of the California Constitution. (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.) The determination of whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. (*County of San Diego v. State of California*, (1997) 15 Cal.4th 68,109.)

Claimant is a school district as defined in Government Code Section 17519. This test claim is filed pursuant to Title 2, California Code of Regulations section 1183.1.

A. California Constitution requires the State to reimburse schools.

Article XIII B, section 6 of the California Constitution states:

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

The purpose of Article XIII B, section 6 is to [p]reclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that article XIII A and XIII B impose. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.) Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government]...” (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.) Reimbursement under Article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity. (*San Diego Unified School Dist. v. Commission on State Mandates*, (2004) 33 Cal.4th 859, 874.)

2. The mandated activity either:

- a. Carries out the governmental function of providing a service to the public; or
- b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state. (*San Diego Unified School Dist., supra 33 Cal.4th at 874-875* (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56).)

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order, and it increases the level of service provided to the public. (*San Diego Unified School Dist., supra 33 Cal.4th 859, 874-875, 878; Lucia Mar Unified School District v. Honig* (1988) 44 Cal 3d 830, 835.)

B. The new program is mandated when the schools incur increased costs.

Government Code section 17514 provides that [c]osts mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17564 provides that: [n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551, or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars.

Claimant alleges increased costs mandated by the state in the amount of \$5,000,000.00, for California schools impacted by the test claim statutes, which exceeds the \$1,000.00 minimum claim amount articulated in Government Code section 17564(a). Government Code section 17556(e) states that there are no costs mandated by the state, if additional revenue specifically intended to fund the costs of the mandated activities, in an amount sufficient to fund the cost of the state-mandated activities, has been appropriated in a Budget Act or other bill.

There is no evidence that additional on-going revenue has been appropriated, specifically to fund the costs of the mandated activities in this claim. Thus, Government Code section 17556(e) does not apply to deny this claim. Accordingly, the evidence in the record supports the finding that the claimant has incurred increased costs mandated by the state, pursuant to Government Code section 17514. However, to the extent a school receives any funding or grant funding and applies those funds to the mandated activities, those funds are required to be identified as offsetting revenue and deducted from the costs claimed.

Identify the specific sections of statutes or executive orders alleged to contain a mandate. Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000.00), and include all of the following elements for each statute or executive order alleged:

Statutes 2021 Chapter 664, A.B. No 367 Section 1.

This act shall be known as the Menstrual Equity for All Act of 2021. California recognizes that access to menstrual products is a basic human right and is vital for ensuring the health, dignity, and full participation of all Californians in public life.

The Legislature declared that:

California has an interest in promoting gender equity, not only for women and girls, but also for transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products.

Inadequate menstrual support is associated with both health and psychosocial issues, particularly among low-income people. A lack of access to menstrual products can cause emotional distress, physical infection, and disease.

Equal opportunity to education is a fundamental right recognized by the California Constitution. Section 5 of Article IX of, subdivision (a) of Section 7 of Article I of, and subdivision (a) of Section 16 of Article IV of, the California Constitution require the state to maintain and operate the public school system in a manner that provides basic educational equity to students.

California has an interest in creating safe, welcoming, and inclusive schools for all students. Subdivision (b) of Section 201 of the Education Code, in particular, requires all preschool, elementary, and secondary schools to affirmatively combat

racism, sexism, and other forms of bias.

Research shows that students lacking access to menstrual products experience higher rates of absences and are less able to focus and engage in the classroom. Absenteeism can lead to significant performance gaps and is linked to social disengagement, feelings of alienation, and adverse outcomes even into adulthood.

The provision of menstrual products in schools helps ensure California provides equal access to education and enables students to reach their full potential, irrespective of gender.

Expanding student access to menstrual products can result in increased attendance rates. After the City of New York passed a law providing free menstrual products to students, participating schools saw a 2.4 percent increase in attendance.

Expanding student access to menstrual products can also result in cost savings due to increased funding associated with student attendance and reduced administrative costs and expenses from charging for menstrual products.

It is the intent of the Legislature that this act provide for the health, dignity, and safety of menstruating students at every socioeconomic level, normalize menstruation among all genders, and foster gender competency in California schools, colleges, and universities.

(AB 367 Assembly Floor Analysis- August 26, 2021.)

The aforementioned intent of the legislature was to require school districts to comply with the requirements of the test claim statute. Such requirements are unique to public service.

Statutes 2021 Chapter 664, A.B. No 367 Section 2; 35292.6 is amended to the Education Code, to read:

- (a) A public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, that meets the 40-percent pupil poverty threshold required to operate a schoolwide program pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code shall stock at least 50 percent of the school's restrooms with menstrual products, available and accessible, free of cost, at all times.

- (b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products.
- (c) For purposes of this section, “feminine hygiene products” means tampons and sanitary napkins for use in connection with the menstrual cycle.
- (d) This section shall become inoperative on June 30, 2022, and, as of January 1, 2023, is repealed.

Statutes 2021 Chapter 664, A.B. No 367 Section 3; Education Code Section 35292.6 is added to read:

Assembly Bill No. 367, Section 3 amends existing law and enacts the Menstrual Equity for All Act of 2021 requiring the following new requirements:

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

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

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

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

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

SECTION 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

C. New Activities For Schools

Schools have incurred or will incur costs implementing the following new activities:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products.
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the district's restrooms.
- (iii) *Purchasing and installing dispensers in the schools and campus restrooms.*
- (iv) *Purchasing and stocking the schools and campus restrooms with menstrual products at all times.*

D. A detailed description of existing activities and costs that are modified by the mandate

On May 24, 2019, the Commission on State Mandates (Commission) adopted the decision finding that Test Claim 18-TC-01 Public School Restrooms Feminine Hygiene Products the statutes imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; and (2) meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families, for such schools to stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, Ch. 687.)

E. The actual increased costs incurred by claimant Hesperia Unified School District during the fiscal year for which the claim was filed to implement the alleged mandate pertaining to Assembly Bill No. 367, Section 3, that amended Education Code Section 35292.6 to require the following new activities:

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

The increased costs related to installing dispensers the claimants schools’ restrooms and stocking the claimants schools’ restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom are as follows:

Fiscal Year: 2022-2023

Equipment

<u>Dispensers</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Cost</u>	<u>Date of Invoice</u>
EVOGEN EVI- DISPENSER (59 UNITS)		347.49	\$22,090.81	August 5, 2022
EVOGEN EVI- DISPENSER (41 UNITS)		347.49	<u>\$15,351.24</u>	September 16, 2022
Total (Dispensers)			\$37,442.05	

Cost of Installing Dispensers- Labor Cost

Director of Risk Management - Hourly Rate \$77.78 Custodial Supervisor - Hourly Rate \$49.14

Time to install for both employees - 20 hours.

Labor Hour Cost (\$77.78+\$49.14= \$126.92) @ 20 hours is \$2,538.40

plus 30% for statutory costs = \$3,299.92.

<u>Menstrual Products</u>	<u>Cost</u>	<u>Date of Invoice</u>
MAXIPADS	79.22	August 8, 2022
MAXITHINS	101.69	August 8, 2022
TAMPAX	168.89	August 12, 2022
MAXITHINS	203.40	August 17, 2022
SANTAIRE 12IN	777.57	September 8, 2022
TAMPAX	255.63	September 8, 2022

Test Claim: Public School Restrooms
Menstrual Products
Claimant: Hesperia Unified School District
5. Written Narrative

NATURELLE MAXI ULTR THIN	426.50	September 8, 2022
NATURELLE TAMPONS	234.12	September 21, 2022
KOTEX ULTRA	184.15	November 14, 2022
KLEENEX	365.45	November 14, 2022
MAXIPADS	<u>87.15</u>	December 14, 2022
Total Menstrual Products	<u>\$2,883.76</u>	
TOTAL COSTS	\$43,625.73	

F. The actual or estimated annual increased costs that will be incurred by claimant Hesperia Unified School District to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed for stocking the claimants schools' restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women's restrooms and all-gender restrooms, and in at least one men's restroom are as follows:

Estimated Costs for FY 2023-2024.

The purchasing and stocking Menstrual Products \$ 2,883.76

G. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate for installing dispensers in the schools' restrooms and stocking the claimants schools' restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women's restrooms and all-gender restrooms, and in at least one men's restroom during the fiscal year immediately following the fiscal year for which the claim was filed.

\$5,000,000.00.

H. Identification of all of the following funding sources available for this program:

(i) Dedicated state funds¹

¹ Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service. (Cal. Const. art. 13B, § 6)

Claimant is unaware at this time of any other dedicated state funds available for this program.

(ii) Dedicated federal funds

Claimant is unaware at this time of any other dedicated state funds available for this program.

(iii) Other nonlocal agency funds

Claimant is unaware at this time of any other dedicated state funds available for this program.

(iv) The local agency's general purpose funds

Claimant's general funds are available for this program.

(v) Fee authority to offset costs

Claimant is unaware at this time of any other dedicated state funds available for this program.

I. Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

Test Claim 18-TC-01, Public School Restrooms Feminine Hygiene Products was approved by the Commission on State Mandates as a reimbursable mandate.

Education Code Sections 14501, 33126(b), 35186, 41020 and 42127.6 required students be provided with decent, clean, and safe facilities that was maintained to ensure good repair, along with providing sufficient instructional materials and qualified teachers. (Williams Cost Implementation I, II, III; 05-TC-04; 07-TC-06; 08-TC-01)

Test Claim: Public School Restrooms
Menstrual Products
Claimant: Hesperia Unified School District
5. Written Narrative

J. Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order

Claimants are unaware at this time of any legislatively determined mandates, that are on, or may be related to, the same statute or executive order.

Test Claim: Public School Restrooms
Menstrual Products
Claimants: Hesperia Unified School District
Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,
Hesperia Unified School District

SECTION NUMBER: 6
Heading: DECLARATION

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

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

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

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

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

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

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

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

**Test Claim: Public School Restrooms
Menstrual Products**

Claimants: Hesperia Unified School District

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

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

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products; (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the schools' restrooms; (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)
- (iii) The purchasing and installing dispensers in the schools' restrooms. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)
- (iv) The purchasing of the menstrual products and stocking the schools' restrooms with menstrual products at all times. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)

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

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products. (\$ -0-.)
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the schools' restrooms. (\$-0-.)
- (iii) The cost of purchasing and installing dispensers in the schools' restrooms. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)

Test Claim: Public School Restrooms
 Menstrual Products
 Claimants: Hesperia Unified School District
 Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,
 Hesperia Unified School District

Increased cost of purchasing Dispensers

EVOGEN EVI- DISPENSER (59 UNITS)	\$22,090.81	August 5, 2022
EVOGEN EVI- DISPENSER (41 UNITS)	<u>\$15,351.24</u>	September 16, 2022
Increased cost of dispensers.	\$37,442.05	

Attached are documents in support of the menstrual products’ dispenser costs incurred.

Increased cost of installing Dispensers- Labor Cost

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

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

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

Increased costs for purchasing menstrual products:

MAXIPADS	\$79.22	August 8, 2022
MAXITHINS	101.69	August 8, 2022
TAMPAX	168.89	August 12, 2022
MAXITHINS	203.39	August 17, 2022
SANITAIRE 12IN	777.57	September 8, 2022
TAMPAX	255.63	September 8, 2022
NATURELLE MAXI ULTR THIN	426.50	September 8, 2022
NATURELLE TAMPONS	234.12	September 21, 2022
KOTEX ULTRA	184.15	November 14, 2022
KLEENEX	365.45	November 14, 2022
MAXIPADS	<u>87.15</u>	December 14, 2022

Test Claim: Public School Restrooms
Menstrual Products
Claimants: Hesperia Unified School District
Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,
Hesperia Unified School District

Total menstrual products costs incurred. \$2,883.76

Attached are documents in support of the dispensers and menstrual products costs incurred and future estimated costs.


4. The increased costs for complying with the test claim statute for 2023-2024 are as follows:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products. (\$-0-)
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the schools' restrooms. (\$ -0-)
- (iii) The cost of purchasing and installing dispensers in the schools' restrooms. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).)
- (v) The cost of purchasing the menstrual products and stocking the schools' restrooms with menstrual products at all times are as follows: (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3(a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).) \$2,883.76

5. I am unaware of any local, state, or federal funds or fee authority that may be used to offset the increased costs that will be incurred by claimant to implement the alleged mandate, including direct and indirect costs. Local agency (general) funds are available for this program

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

Dated: June 5, 2023


DECLARATION –DR. GEORGE LANDON
DEPUTY SUPERINTENDENT, BUSINESS SERVICE,
HESPERIA UNIFIED SCHOOL DISTRICT



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DISTRICT OFFICE
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HESPERIA, CA 92345-3482

R WAXIE SANITARY SUPPLY
E P. O. Box 748802
M Los Angeles, CA 90074-8802
I (858) 292-8111
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RECEIVED
SEP 12 2022
AUG 9 2022

INVOICE NUMBER	81092267
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INVOICE

CUSTOMER NUMBER	32505 1
INVOICE DATE	08/08/22
PURCHASE ORDER NO.	230003
ORDER NO.	RH31L/01

Page: 1

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
820020	MAXITHINS #4 FEMININE HYGIENE Pack:250 WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL ** Payment Terms: NET 30 DAYS APPROVED FOR PAYMENT <i>Diane Beam</i> DATE <u>9/9/22</u> 4390	2	2	CS		47.190T	94.38

PAID

DATE DUE	9/07/22
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	94.38
SALES TAX	7.31
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	101.69
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	08/08/22
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INVOICE NUMBER	81092267
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TOTAL DUE BY	9/07/22	101.69
TOTAL DUE AFTER	9/07/22	101.69

CA HESPERIA UNIFIED SD
DISTRICT OFFICE
15576 MAIN ST
HESPERIA, CA 92345-3482

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 I (858) 292-8111
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INVOICE NUMBER
81196568

INVOICE

CUSTOMER NUMBER	32505 23
INVOICE DATE	09/21/22
PURCHASE ORDER NO.	230578
ORDER NO.	RU8BK/00

S CA HESPERIA UNIFIED SD
 O DISTRICT OFFICE
 L 15576 MAIN ST
 D HESPERIA, CA 92345-3482
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S SULTANA HIGH SCHOOL
 H 17311 SULTANA ST
 I HESPERIA, CA 92345-6596
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RECEIVED
 SEP 22 2022

HUSD Accounts Payable

Page: 1

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
855807	CLEAN & SOFT SUPER MAX SINGLE	20	20	EA		.000T	.00
	785.40 Waived for above item						
820012	NATURELLE TAMPONS 500 PER Pack:500 WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL SULTANA OPEN PO 190115 VALID 7/1/18-6/30/19 CUSTODIAL SUPPLIES **CONTACT 760-646-5698 ROCKY** ** Payment Terms: NET 30 DAYS	2	2	CS		108.640T	217.28
	4890						

PAID
 OCT 12 2022

DATE DUE	10/21/22
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T 1 1/2% PER MONTH (18%A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
 E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
 R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
 M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
 S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	217.28
SALES TAX	16.84
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	234.12
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	09/21/22
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INVOICE NUMBER	81196568
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TOTAL DUE BY	10/21/22
	234.12

TOTAL DUE AFTER	10/21/22
	234.12

CA HESPERIA UNIFIED SD
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 15576 MAIN ST
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SEP 09 2022

INVOICE NUMBER

81075859

INVOICE

RECEIVED

AUG 02 2022

HUSD Accounts Payable

CUSTOMER NUMBER	32505	23
INVOICE DATE	08/01/22	
PURCHASE ORDER NO.	230578	
ORDER NO.	RF97C/01	

Page: 1

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CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

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SULTANA HIGH SCHOOL
 17311 SULTANA ST
 HESPERIA, CA 92345-6596

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
822002 4390	MAXITHINS COMFORT PLUS TAMPONS	2		CS	2	61.640T	.00
820022 4390	147A GARDS MAXI PADS 250 PER CS Pack:250	2	2	CS		36.760T	73.52
350310 4370	3M 6472 DOODLEBUG PAD HOLDER	1		CS	1	116.350T	.00
574824 4370	ELE SANITAIRE SC5745D 13" WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL SULTANA OPEN PO 190115 VALID 7/1/18-6/30/19 CUSTODIAL SUPPLIES **CONTACT 760-646-5698 ROCKY** ** Payment Terms: NET 30 DAYS	1		EA	1	266.390T	.00

APPROVED FOR PAYMENT

D. Stats

DATE

9-9-22

4390

PAID

NOV 04 2022

DATE DUE	8/31/22
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
 E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
 R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
 M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
 S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	73.52
SALES TAX	5.70
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	79.22
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	08/01/22
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INVOICE NUMBER	81075859
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TOTAL DUE BY	8/31/22	79.22
TOTAL DUE AFTER	8/31/22	79.22

CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

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INVOICE NUMBER
 81383540

INVOICE

CUSTOMER NUMBER	32505 23
INVOICE DATE	12/14/22
PURCHASE ORDER NO.	230578
ORDER NO.	R541G/02

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 CA HESPERIA UNIFIED SD
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 HESPERIA, CA 92345-3482

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 SULTANA HIGH SCHOOL
 17311 SULTANA ST
 HESPERIA, CA 92345-6596

Page: 1

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
820022	***** * Holiday Hours * * WAXIE will be closed * * December 23rd and December 26th * * in observance of Christmas * * WAXIE will also be closed * * December 30th and January 2nd * * in observance of New Years * ***** 147A GARDS MAXI PADS 250 PER CS Pack:250 WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL SULTANA OPEN PO 190115 VALID 7/1/18-6/30/19 CUSTODIAL SUPPLIES **CONTACT 760-646-5698 ROCKY** oc via phone ** Payment Terms: NET 30 DAYS <div style="text-align: center;"> <p>APPROVED FOR PAYMENT</p> <p><i>D Stats</i></p> <p>DATE <u>1-26-23</u></p> </div>	2	2	CS		40.440T	80.88

DATE DUE	1/13/23
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
 E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
 R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
 M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
 S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	80.88
SALES TAX	6.27
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	87.15
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	12/14/22
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INVOICE NUMBER	81383540
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TOTAL DUE BY	1/13/23	87.15
TOTAL DUE AFTER	1/13/23	87.15

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INVOICE NUMBER
81320420

INVOICE

CUSTOMER NUMBER	32505 4
INVOICE DATE	11/14/22
PURCHASE ORDER NO.	230003 231260
ORDER NO.	RW187/02

Page: 1

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 CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

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 OAK HILLS HIGH SCHOOL
 7625 CATABA RD
 HESPERIA, CA 92344-8713

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
822008	U BY KOTEX ULTRA-THIN FLEXIBLE	5	5	CS		36.830T	184.15
380338	91552 KLEENEX LUXURY FOAM SKIN Pack:6/1000M WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL AM DELIVERY CONTACT 760-244-2283 ** Payment Terms: NET 30 DAYS 4370: \$350.76 4390: \$198.42 APPROVED FOR PAYMENT _____ DATE _____	5	5	CS		65.110T	325.55

DATE DUE	12/14/22
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
 E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
 R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
 M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
 S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	509.70
SALES TAX	39.50
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	549.20
AMOUNT TENDERED	

CUSTOMER NUMBER
32505

INVOICE DATE
11/14/22

INVOICE NUMBER
81320420



TOTAL DUE BY	12/14/22
	549.20
TOTAL DUE AFTER	12/14/22
	549.20

CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

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 M Los Angeles, CA 90074-8802
 I (858) 292-8111
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INVOICE NUMBER
81166062

INVOICE

CUSTOMER NUMBER	32505 18
INVOICE DATE	09/08/22
PURCHASE ORDER NO.	230061
ORDER NO.	RN87A/00

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CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

S MISSION CREST ELEMENTARY
 13065 MUSCATEL ST
 HESPERIA, CA 92344-5572
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Page: 1

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
574820 4370	SANITAIRE SC886G 12IN 7 AMP SN: 2212956882H 2213057281H 2213057291H	3	3	EA		259.190T	777.57
822000 4340	TAMPAX REGULAR ABSORBENCY Pack:500	3	3	CS		85.210T	255.63
822003 4340	NATURELLE MAXI ULTRA THIN #8 Pack:250 WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL	3	3	CS		107.170T	321.51

** Payment Terms: NET 30 DAYS

4370: 4340:
 \$837.83 \$621.87

APPROVED FOR PAYMENT

DATE 11/7/22

PAID
 JAN 31 2023

DATE DUE	10/08/22
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
 E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
 R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
 M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
 S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	1,354.71
SALES TAX	104.99
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	1,459.70
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	09/08/22
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INVOICE NUMBER	81166062
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TOTAL DUE BY	10/08/22
	1,459.70

TOTAL DUE AFTER	10/08/22
	1,459.70

CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

REMIT TO ADDRESS BELOW

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 Los Angeles, CA 90074-8802
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AUG 08 2022

INVOICE NUMBER
81088661

INVOICE

CUSTOMER NUMBER	32505	11
INVOICE DATE	08/05/22	
PURCHASE ORDER NO	231088	
ORDER NO.	Q43TR/00	

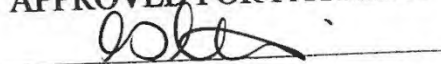
Page: 1

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 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

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 CA HESPERIA UNIFIED SD
 H. U. S. D. WAREHOUSE
 17575 EUCALYPTUS ST
 HESPERIA, CA 92345-5119

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
822202	EVOGEN EV1 FREE VEND DUAL WHITE	100	59	EA	41	347.490T	20501.91
822000	TAMPAX REGULAR ABSORBENCY Pack:500	2		CS	2	78.370T	.00
820020	MAXITHINS #4 FEMININE HYGIENE Pack:250 WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL	4		CS	4	47.190T	.00

** Payment Terms: NET 30 DAYS

APPROVED FOR PAYMENT

 DATE 10/7/2022
 4390

PAID
 OCT 24 2022

DATE DUE	9/04/22
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
 E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
 R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
 M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
 S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	20,501.91
SALES TAX	1,588.90
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	22,090.81
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	08/05/22
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INVOICE NUMBER	81088661
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TOTAL DUE BY	9/04/22	22,090.81
TOTAL DUE AFTER	9/04/22	22,090.81

CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

REMIT TO ADDRESS BELOW

WAXIE SANITARY SUPPLY
 P. O. Box 748802
 Los Angeles, CA 90074-8802
 (858) 292-8111



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R WAXIE SANITARY SUPPLY
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 M Los Angeles, CA 90074-8802
 I (858) 292-8111
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INVOICE NUMBER
81115205

INVOICE

CUSTOMER NUMBER	32505	11
INVOICE DATE	08/17/22	
PURCHASE ORDER NO.	231038	
ORDER NO.	Q43TR/02	

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 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

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CA HESPERIA UNIFIED SD
 H. U. S. D. WAREHOUSE
 17575 EUCALYPTUS ST
 HESPERIA, CA 92345-5119

Page: 1

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	UM	BACKORDR		
822202	EVOGEN EV1 FREE VEND DUAL WHITE	41		EA	41	347.490T	.00
820020	MAXITHINS #4 FEMININE HYGIENE Pack:250 WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL ** Payment Terms: NET 30 DAYS	4	4	CS		47.190T	188.76

APPROVED FOR PAYMENT

DATE 10/11/2022

PAID
OCT 24 2022

DATE DUE	9/16/22
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
 E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
 R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
 M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
 S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	188.76
SALES TAX	14.63
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	203.39
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	08/17/22
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INVOICE NUMBER	81115205
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TOTAL DUE BY	9/16/22
	203.39

TOTAL DUE AFTER	9/16/22
	203.39

CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

REMIT TO ADDRESS BELOW

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 Los Angeles, CA 90074-8802
 (858) 292-8111



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 M Los Angeles, CA 90074-8802
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INVOICE NUMBER
81186862

INVOICE

CUSTOMER NUMBER	32505 11
INVOICE DATE	09/16/22
PURCHASE ORDER NO.	231038
ORDER NO.	Q43TR/03

Page: 1

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 H. U. S. D. WAREHOUSE
 17575 EUCALYPTUS ST
 HESPERIA, CA 92345-5119

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
822202	EVOGEN EV1 FREE VEND DUAL WHITE WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL ** Payment Terms: NET 30 DAYS 4370	41	41	EA		347.490T	14247.09

PAID
 OCT 9 4 2022

DATE DUE	10/16/22
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
 E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
 R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
 AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
 M CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 S BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	14,247.09
SALES TAX	1,104.15
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	15,351.24
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	09/16/22
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INVOICE NUMBER	81186862
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TOTAL DUE BY	10/16/22
	15,351.24

TOTAL DUE AFTER	10/16/22
	15,351.24

CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

REMIT TO ADDRESS BELOW

WAXIE SANITARY SUPPLY
 P. O. Box 748802
 Los Angeles, CA 90074-8802
 (858) 292-8111



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INVOICE NUMBER
81105130

INVOICE

CUSTOMER NUMBER	32505 11
INVOICE DATE	08/12/22
PURCHASE ORDER NO.	220031 231038
ORDER NO.	Q43TR/01

Page: 1

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CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

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CA HESPERIA UNIFIED SD
 H. U. S. D. WAREHOUSE
 17575 EUCALYPTUS ST
 HESPERIA, CA 92345-5119

ITEM NUMBER	DESCRIPTION	QUANTITY				UNIT PRICE	EXTENDED AMOUNT
		ORDERED	SHIPPED	U/M	BACKORDR		
822202	EVOGEN EV1 FREE VEND DUAL WHITE	41		EA	41	347.490T	.00
822000	TAMPAX REGULAR ABSORBENCY Pack:500	2	2	CS		78.370T	156.74
820020	MAXITHINS #4 FEMININE HYGIENE Pack:250 WAXIE TRUCK ONLY NO UPS! PER REP RUSSELL ** Payment Terms: NET 30 DAYS	4		CS	4	47.190T	.00

APPROVED FOR PAYMENT
[Signature]
 DATE 11/3/2022

DATE DUE	9/11/22
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T 1 1/2% PER MONTH (18% A.P.R.) SERVICE CHARGE MAY BE APPLIED ON ALL PAST DUE BALANCES. IF
E PAYMENT IS NOT MADE ON THE DUE DATE, BUYER AGREES BY SIGNING THIS INVOICE OR TAKING
R DELIVERY OF THE MERCHANDISE DESCRIBED ABOVE TO PAY SERVICE CHARGES, ATTORNEYS' FEES
M AND ALL OTHER COSTS INCURRED IN THE COLLECTION OR ENFORCEMENT OF THE AMOUNT DUE.
S CUSTOM ORDERS CANNOT BE ACCEPTED FOR RETURN WITHOUT AUTHORIZATION. RETURNS MUST
 BE RETURNED IN ORIGINAL CONTAINER AND IN RESALABLE CONDITION. ALL ORDERS MAY BE
 SUBJECT TO A RESTOCKING CHARGE, PLUS ANY FREIGHT CHARGES INCURRED.

SUB TOTAL	156.74
SALES TAX	12.15
SHIPPING	
MINIMUM ORDER FEE	
TOTAL INVOICE	168.89
AMOUNT TENDERED	

CUSTOMER NUMBER	32505
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INVOICE DATE	08/12/22
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INVOICE NUMBER	81105130
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TOTAL DUE BY	9/11/22
	168.89

TOTAL DUE AFTER	9/11/22
	168.89

CA HESPERIA UNIFIED SD
 DISTRICT OFFICE
 15576 MAIN ST
 HESPERIA, CA 92345-3482

REMIT TO ADDRESS BELOW

WAXIE SANITARY SUPPLY
 P. O. Box 748802
 Los Angeles, CA 90074-8802
 (858) 292-8111

Assembly Bill No. 367
CHAPTER 664

An act to amend, repeal, and add Section 35292.6 of, and to add Section 66027.7 to, the Education Code, relating to menstrual products.

[Approved by Governor October 08, 2021. Filed with Secretary of
State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 367, Cristina Garcia. Menstrual products.

Existing law requires a public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets a 40% pupil poverty threshold specified in federal law, to stock 50% of the school's restrooms with feminine hygiene products, and prohibits a public school from charging for any menstrual products provided to pupils.

This bill would enact the Menstrual Equity for All Act of 2021, which would require a public school, as provided, maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school's restrooms with an adequate supply of free menstrual products, as defined, available and accessible, free of cost, in all women's restrooms and all-gender restrooms, and in at least one men's restroom, at all times, and to post a designated notice, on or before the start of the 2022-23 school year, as prescribed.

This bill would require the California State University and each community college district, and would encourage the Regents of the University of California and private universities, colleges, and institutions of higher learning, to stock an adequate supply of menstrual products, available and accessible, free of cost, at no fewer than one designated and accessible central location on each campus and to post a designated notice, as provided. By imposing additional requirements on public schools and community college districts, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

(a) This act shall be known, and may be cited, as the Menstrual Equity for All Act of 2021.

(b) The Legislature finds and declares all of the following:

(1) California recognizes that access to menstrual products is a basic human right and is vital for ensuring the health, dignity, and full participation of all Californians in public life.

(2) California has an interest in promoting gender equity, not only for women and girls, but also for transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products.

(3) Inadequate menstrual support is associated with both health and psychosocial issues, particularly among low-income people. A lack of access to menstrual products can cause emotional distress, physical infection, and disease.

(4) Equal opportunity to education is a fundamental right recognized by the California Constitution. Section 5 of Article IX of, subdivision (a) of Section 7 of Article I of, and subdivision (a) of Section 16 of Article IV of, the California Constitution require the state to maintain and operate the public school system in a manner that provides basic educational equity to students.

(5) California has an interest in creating safe, welcoming, and inclusive schools for all students. Subdivision (b) of Section 201 of the Education Code, in particular, requires all preschool, elementary, and secondary schools to affirmatively combat racism, sexism, and other forms of bias.

(6) Research shows that students lacking access to menstrual products experience higher rates of absences and are less able to focus and engage in the classroom. Absenteeism can lead to significant performance gaps and is linked to social disengagement, feelings of alienation, and adverse outcomes even into adulthood.

(7) The provision of menstrual products in schools helps ensure California provides equal access to education and enables students to reach their full potential, irrespective of gender.

(8) Expanding student access to menstrual products can result in increased attendance rates. After the City of New York passed a law providing free menstrual products to students, participating schools saw a 2.4 percent increase in attendance.

(9) Expanding student access to menstrual products can also result in cost savings due to increased funding associated with student attendance and reduced administrative costs and expenses from charging for menstrual products.

(c) It is the intent of the Legislature that this act provide for the health, dignity, and safety of menstruating students at every socioeconomic level, normalize menstruation among all genders, and foster gender competency in California schools, colleges, and universities.

SEC. 2.

Section 35292.6 of the Education Code is amended to read:

35292.6.

(a) A public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, that meets the 40-percent pupil poverty threshold required to operate a schoolwide program pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code shall stock at least 50 percent of the school’s restrooms with menstrual products, available and accessible, free of cost, at all times.

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

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

(d) This section shall become inoperative on June 30, 2022, and, as of January 1, 2023, is repealed.

SEC. 3.

Section 35292.6 is added to the Education Code, to read:

35292.6.

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

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

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

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

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

SEC. 4.

Section 66027.7 is added to the Education Code, to read:

66027.7.

(a)(1) The California State University and each community college district shall stock an adequate supply of menstrual products, available and accessible, free of cost, at no fewer than one designated and accessible central location on each campus.

(2) (A) A location's accessibility shall be determined by considering all of, but not limited to, the following factors:

(i) Hours of operation, relative to hours that students are on campus.

(ii) Proximity to high-traffic areas on campus.

(iii) Accessibility by students of all genders and regardless of physical ability.

(iv) Privacy, including whether accessing products would require interaction with staff or other students.

(v) Safety.

(B) Locations described in this paragraph may include student centers, libraries, wellness or health centers, pantries, and study rooms.

(b) The California State University and each community college district shall post a notice regarding the requirements of subdivision (a) in a prominent and conspicuous location in all women's restrooms and all-gender restrooms and in at least one men's restroom.

(c) The Regents of the University of California, independent institutions of higher education, as defined in Section 66010, and private postsecondary educational institutions, as defined in Section 94858, are encouraged to stock an adequate supply of menstrual products, available and accessible, free of cost, at no fewer than one designated and accessible central location on each campus.

(d) If the Regents of the University of California, independent institutions of higher education, as defined in Section 66010, and private postsecondary educational institutions, as defined in Section 94858, implement subdivision (c), the campuses are further encouraged to post a notice regarding the requirements of subdivision (c) in a prominent and conspicuous location in all women's restrooms and all-gender restrooms and in at least one men's restroom.

(e) This section does not prevent a campus from providing more than one location where persons may access menstrual products.

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

SEC. 5.

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

CONCURRENCE IN SENATE AMENDMENTS
AB 367 (Cristina Garcia)
As Amended August 26, 2021
Majority vote

SUMMARY

Requires all public schools serving students in grades 6 to 12 to stock specified restrooms with an adequate supply of free menstrual products, commencing in the 2022-23 school year; and requires the California State University (CSU) and each community college district, and encourages the Regents of the University of California (UC), independent institutions of higher education, and private postsecondary educational institutions, to stock an adequate supply of free menstrual products at no fewer than one designated and accessible central location on each campus.

Senate Amendments

- 1) Require that menstrual products, in all settings required by the measure, be provided free of cost and in an available and accessible manner.
- 2) Require that accessibility of the location at which menstrual products must be made available at postsecondary institutions be determined based on the following factors:
 - a) Hours of operation, relative to hours that students are on campus;
 - b) Proximity to high-traffic areas on campus;
 - c) Accessibility by students of all genders and regardless of physical ability;
 - d) Privacy, including whether accessing products would require interaction with staff or other students; and
 - e) Safety.
- 3) State that these locations at postsecondary institutions may include student centers, libraries, wellness or health centers, pantries, and study rooms.
- 4) State that a campus of a postsecondary institution is not prevented from providing more than one location where persons may access menstrual products.
- 5) Add findings and declarations.

COMMENTS

Adolescents' experience relating to menstruation and school. A 2019 Harris Interactive poll of 2,000 United States teens aged 13 to 19 commissioned by the nonprofit organization PERIOD and a menstrual products company found:

- 1) Two-thirds of teens have felt stress due to lack of access to period products.
- 2) 20% have struggled to afford period products or were not able to purchase them at all.

- 3) 61% have worn a tampon or pad for more than four hours because they did not have enough access to period products (which puts them at risk of infection and TSS).
- 4) 84% have either missed class time or know someone who missed class time because they did not have access to period products.
- 5) 25% have missed class because of lack of access to period products.
- 6) 83% think lack of access to period products is an issue that is not talked about enough.
- 7) 66% do not want to be at school when they are on their period.
- 8) 69% feel embarrassed when they have to bring period products to the bathroom.
- 9) The majority (51%) of students feel like their school does not care about them if they do not provide free period products in their bathrooms.
- 10) 51% have missed at least part of a class or class period due to menstruation symptoms such as cramps.

According to the Author

"Our biology doesn't always send an advance warning when we're about to start menstruating, which often means we need to stop whatever we're doing and deal with a period. Often periods arrive at inconvenient times. They can surprise us during an important midterm, while playing with our children at a park, sitting in a lobby waiting to interview for a job, shopping at the grocery store, or even standing on the Assembly Floor presenting an important piece of legislation. Having convenient and free access to these products means our period will not prevent us from being productive members of society, and would alleviate the anxiety of trying to find a product when out in public."

Arguments in Support

California Latinas for Reproductive Justice writes, "By providing menstrual products in schools, California helps ensure its students have equal access to education and are empowered to reach their full potential, irrespective of their gender or economic status. Research shows that students lacking access to menstrual products experience higher rates of absence and are less able to focus and engage in the classroom. For example, one study found that one in four girls missed class due to a lack of access to menstrual products and that one in five reported not being able to afford menstrual products. A campus chapter of PERIOD at UC Davis surveyed students and reported that 52% of student respondents said they missed class or work in the last school year because they could not access a tampon or pad. Absenteeism can lead to significant performance gaps and is linked to social disengagement, feelings of alienation, and adverse outcomes even into adulthood. Significantly, after New York City passed a law providing free menstrual products to students, participating schools saw a 2.4% increase in attendance. AB 367 is a critical step toward removing barriers to equity for all Californians who menstruate, especially those who have struggled to access menstrual products due to gender or income."

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) This bill could result in one-time Proposition 98 General Fund costs of approximately \$2 million for school districts to install or modify menstrual product dispensers, and additional ongoing Proposition 98 General Fund costs of about \$1.3 million each year to provide free menstrual products. School districts may also incur additional, unknown costs to comply with the bill's restroom noticing requirements. These costs are likely to be deemed reimbursable by the Commission on State Mandates.
- 2) The Chancellor's Office estimates Proposition 98 General Fund costs of between \$57,500 and \$115,000 annually to provide free menstrual products at a centralized location on the 115 community college campuses. There could also be additional one-time costs, likely to be minor, for campuses to comply with the bill's noticing requirements.
- 3) The UC estimates General Fund costs in the low tens of thousands of dollars annually to comply with the bill's requirements, while the CSU indicates General Fund costs of between \$750,000 and \$800,000 each year to provide additional menstrual products for its health centers.

VOTES:

ASM EDUCATION: 7-0-0

YES: O'Donnell, Kiley, Bennett, Megan Dahle, Lee, McCarty, Quirk-Silva

ASM HIGHER EDUCATION: 11-0-1

YES: Medina, Arambula, Bloom, Gabriel, Irwin, Kiley, Levine, Low, Blanca Rubio, Santiago, Valladares

ABS, ABST OR NV: Choi

ASM APPROPRIATIONS: 15-1-0

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow

ASSEMBLY FLOOR: 77-0-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Bigelow, Voepel

SENATE FLOOR: 38-0-2

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Eggman, Stern

SENATE FLOOR: 38-0-2

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Eggman, Stern

SENATE FLOOR: 34-2-4

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

NO: Grove, Melendez

ABS, ABST OR NV: Dahle, Eggman, Jones, Stern

UPDATED

VERSION: August 26, 2021

CONSULTANT: Tanya Lieberman / ED. / (916) 319-2087

FN: 0001602

State of California

EDUCATION CODE

Section 35292.6

35292.6. (a) On or before the start of the 2022–23 school year, a public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, shall stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom.

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

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

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

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

(Repealed (in Sec. 2) and added by Stats. 2021, Ch. 664, Sec. 3. (AB 367) Effective January 1, 2022. Operative July 1, 2022, by its own provisions.)

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 June 20, 2023, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued June 20, 2023**
- **Test Claim filed by the Hesperia Unified School District on May 12, 2023**
Public School Restrooms: Feminine Hygiene Products II, 22-TC-04
Statutes 2021, Chapter 664, Sections 1, 3 (AB 367); Education Code Section 35292.6; effective January 1, 2022
Hesperia Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 20, 2023 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/13/23

Claim Number: 22-TC-04

Matter: Public School Restrooms: Feminine Hygiene Products II

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

Amber Alexander, *Department of Finance*

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July 20, 2023



Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Response to Test Claim 22-TC-04, Public School Restrooms: Feminine Hygiene Products II

Dear Heather Halsey:

The Department of Finance has reviewed the Test Claim 22-TC-04, submitted to the Commission on State Mandates (Commission) by the Hesperia Unified School District (Claimant). The test claim alleges state-mandated, reimbursable costs associated with Chapter 664, Statutes of 2021 (AB 367), which requires public schools maintaining any combination of classes from grades 6 to 12, inclusive, to stock all women’s and all-gender restrooms, and at least one men’s restroom, with an adequate supply of menstrual products, defined as menstrual pads and tampons, that are available and accessible, and free of cost, at all times.

Several of the activities listed as mandatory by the Claimant raise questions about the accuracy of the asserted required costs. On page 7, the Claimant states the following, emphasis added:

- “Schools have incurred or will incur costs implementing the following new activities:
- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products.
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the district’s restrooms.
- (iii) Purchasing and installing dispensers in the schools and campus restrooms.**
- (iv) Purchasing and stocking the schools and campus restrooms with menstrual products at all times.”**

To the extent that AB 367 establishes new responsibilities, Finance is concerned the required costs may be overstated in the test claim. Finance notes the following concerns related to cost estimates provided by the Claimant on pages 8 and 9, below. We believe the Commission should deny reimbursement for these costs absent sufficient evidence showing that they are required by the plain language of the test claim statute or that they are reasonably necessary.

Concerns:

1. While AB 367 requires certain schools maintaining any combination of classes from grades 6 to 12 to stock free menstrual products in specified restrooms, it does not require schools to install menstrual product dispensers. However, if the Claimant provides sufficient evidence, the purchase and installation of menstrual product dispensers, or other distribution devices, for every women's and all-gender restrooms, and at least one men's restroom, may be reasonable on a one-time basis to ensure statutory requirements set by Education Code Section 35292.6 are met.

Moreover, Finance maintains that reimbursement is not required to install dispensers or other distribution devices to more than one men's restroom, in staff restrooms, in school restrooms not required by statute, or to replace, repair or retrofit dispensers already installed in the restrooms without sufficient justification. Additionally, AB 10 (Chapter 687, Statutes of 2017) required specified schools that meet a 40% pupil poverty threshold to stock at least 50% of the schools' restrooms with menstrual products at all times. It is unclear if the Claimant previously installed dispensers to meet the requirements of AB 10, which would diminish the need to install additional dispensers to comply with the requirements of AB 367. Further, it is unclear what the Claimant identifies as "statutory costs" on page 8.

The Claimant purchased a total of 100 dispensers. However, the Claimant has not identified the number of schools in its district required to comply with the measure, the number of restrooms in each applicable school, or the number of restrooms that already had dispensers and if these existing dispensers were replaced by newly purchased dispensers. 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 or cannot repair or retrofit a sufficient number of existing dispensers to comply with the statute. The Claimant should provide evidence that contains the following information to verify that the estimated costs incurred are reasonable:

- Number of total pupil restrooms in each school that meet the eligibility criteria outlined above.
 - An explanation for the number of dispensers purchased, whether the schools' restrooms were already equipped with dispensers, and why existing dispensers were not sufficient to comply with the mandate.
 - An explanation of the "statutory costs" incurred by the Claimant and cited on page 8.
2. The Claimant included purchases for products that are not aligned with the requirements in the measure. AB 367 defines menstrual products to mean menstrual pads and tampons for use in connection with the menstrual cycle. However, the Claimant includes costs of \$777.57 for "Sanitaire 12in" and \$365.45 for "Kleenex". It is unclear how these products align with the menstrual product

purchase requirements in AB 367. Sanitaire appears to be a brand of commercial vacuums and cleaning products. Kleenex appears to be a brand of facial tissue and other paper products such as paper towels. Reimbursement for these products should be denied because they are not required by the plain language of the test claim statute and are not reasonably necessary to implement the test claim statute.

3. The K-12 Mandate Block Grant includes ongoing funding for costs to K-12 schools to stock restrooms with free tampons and menstrual pads. It is unclear that additional funding is necessary and unclear if any of the stated costs have already been funded. On page 10, the Claimant indicates that they are unaware of any other dedicated state funds available for this program. The Commission on State Mandates determined the costs associated with Public School Restrooms: Feminine Hygiene Products Mandate (18-TC-01) to be a reimbursable mandate. The 2021 Budget Act provided \$560,000 ongoing Proposition 98 General Fund as part of the K-12 Mandate Block Grant. The \$560,000 cost provides funding to all public schools serving K-12th grade levels based on a per-pupil basis. Finance believes that the Claimant should provide justification explaining whether any of the claimed costs were previously resolved through Public School Restrooms: Feminine Hygiene Products Mandate (18-TC-01) mandate and subsequent K-12 Mandates Block Grant Adjustment.
4. Lastly, while the Claimant does not include costs to develop and implement policies and provide training relating to the purchase, installation, stocking, and administration of menstrual products, these activities are listed on page 8 as new activities performed to implement the provisions of AB 367. Existing law (Education Code Section 35292.5) requires all schools, with few exceptions, to maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap and paper towels or functional hand dryers. The aforementioned activities related to the implementation of AB 367 are included within existing activities of a school district, as shown by the fact that no costs are reflected in the test claim. Finance believes the Claimant should remove these activities from the test claim entirely, as they are not necessary to implement the provisions of AB 367.

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

Sincerely,

Chris Ferguson

Chris Ferguson
Program Budget Manager

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On July 20, 2023, I served the:

- **Current Mailing List dated July 10, 2023**
- **Finance's Comments on the Test Claim filed July 20, 2023**

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 20, 2023 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/10/23

Claim Number: 22-TC-04

Matter: Public School Restrooms: Feminine Hygiene Products II

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Exhibit C



August 17, 2023

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

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

Dear Ms. Halsey:

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

A. Introduction

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

1. Commission Previously Approved Test Claim for Menstrual Products

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

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

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

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

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

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

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

3. Commission Decided Dispensers are Suitable and Reasonable

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

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

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

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

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

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

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

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

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


B. Conclusion

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

C. Certification

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

August 17, 2023


Arthur M. Palkowitz
Representative for the Claimant

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

SECTION NUMBER: 6
Heading: DECLARATION

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

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

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

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

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

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

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

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

Test Claim: Public School Restrooms:

Feminine Hygiene Products II (22-TC-04)

Claimants: Hesperia Unified School District

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

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

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

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

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

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

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

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

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

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

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

Increased cost of purchasing Dispensers during FY 2022-2023

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

Increased cost of dispensers. \$37,442.05

(PSR Menstrual 022; 024.)

Increased cost of installing Dispensers- Labor Cost

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

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

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

For 2022-2023 we provide the following information:

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

Prior to AB 367 we provide the following information:

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

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

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

Test Claim: Public School Restrooms:

Feminine Hygiene Products II (22-TC-04)

Claimants: Hesperia Unified School District

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

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

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

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

Increased costs for purchasing menstrual products during FY 2022-2023 are as follows:

MAXIPADS	\$79.22	August 8, 2022
MAXITHINS	101.69	August 8, 2022
TAMPAX	168.89	August 12, 2022
MAXITHINS	203.39	August 17, 2022
SANITAIRE 12IN	777.57	September 8, 2022
TAMPAX	255.63	September 8, 2022
NATURELLE MAXI ULTR THIN	426.50	September 8, 2022
NATURELLE TAMPONS	234.12	September 21, 2022
KOTEX ULTRA	184.15	November 14, 2022
MAXIPADS	<u>87.15</u>	December 14, 2022

Total menstrual products costs incurred. \$2,518.31
(PSR Menstrual 014-021; 023; 025.)

The amount of \$365.45 for “Kleenex” was removed from the increased costs for menstrual products required by AB 367. The costs listed above are not related to the costs incurred for Public School Restrooms: Feminine Hygiene Products Mandate (18-TC-01) mandate.

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

(<https://www.cde.ca.gov/fg/fo/r14/mandatebg23list.asp>.)

Test Claim: Public School Restrooms:

Feminine Hygiene Products II (22-TC-04)

Claimants: Hesperia Unified School District

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

The amount of funding the Claimant received from the Mandate Block Grant is insufficient to cover the increased costs incurred from the State’s mandates including Public School Restrooms: Feminine Hygiene Products Mandate (18-TC-01) mandate.

4. The estimated increased costs for complying with the test claim statute for 2023-2024 are as follows:


- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products. (\$-0-)
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the schools’ restrooms. (\$ -0-)
- (iii) The cost of purchasing and installing dispensers in the schools’ restrooms. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).) (\$ -0-)
- (v) The cost of purchasing the menstrual products and stocking the schools’ restrooms with menstrual products at all times are as follows: (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3(a),(b),(c),(d); Education Code Section 35292.6 (a),(b),(d).) \$2,518.31

5. I am unaware of any local, state, or federal funds or fee authority that may be used to offset the increased costs that will be incurred by claimant to implement the alleged mandate, including direct and indirect costs. Local agency (general) funds are available for this program.

6. I incorporate by reference my declaration dated June 5, 2023. (PSR Menstrual 012-015.)

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

Dated: August 17, 2023



DECLARATION –DR. GEORGE LANDON
DEPUTY SUPERINTENDENT, BUSINESS SERVICE,
HESPERIA UNIFIED SCHOOL DISTRICT

n

AB 10

AB 367

	AB 10		AB 367			
	Girls & AG	Girls	Boys	AG	Total	Additional
Elementary Schools						
Carmel	2	2	1	1	4	2
Cottonwood	1	1	1	1	3	2
Cypress	4	3	1	1	5	1
Eucalyptus		2	2	1	5	5
Hollyvale	1	2	1	1	4	3
Joshua Circle	1	1	1	1	3	2
Juniper	1	1	1	1	3	2
Kingston	1	1	2	1	4	3
Krystal	1	1	1	1	3	2
Lime St.	2	1	1	0	2	0
Maple	1	1	2	1	4	3
Mesa Grande	2	0	1	1	2	0
Mesquite Trails	1	1	1	1	3	2
Mission Crest	1	2	1	1	4	3
Topaz	1	1	1	1	3	2
Secondary Schools						
Cedar	3	2	1	1	4	1
Hesperia Jr.	6	6	4	2	12	6
Rancho	3	4	6	2	12	9
Canyon Ridge	1	1	1		2	1
Hesperia High	5	11	5	3	19	14
Mojave High	2	4	4	4	12	10
Oak Hills	5	11	6	2	19	14
Shadow Ridge	1	3	3		6	5
Sultana	4	6	6		12	8
Totals	50	68	54	28	150	100

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On August 17, 2023, I served the:

- **Current Mailing List dated August 7, 2023**
- **Claimant's Rebuttal Comments filed August 17, 2023**

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 17, 2023 at Sacramento, California.



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

Mailing List

Last Updated: 8/7/23

Claim Number: 22-TC-04

Matter: Public School Restrooms: Feminine Hygiene Products II

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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January 5, 2024

Exhibit D

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

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

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Public School Restrooms: Menstrual Products, 22-TC-04
Statutes 2021, Chapter 664, Sections 1 and 3 (AB 367);
Education Code Section 35292.6
Hesperia Unified School District, Claimant

Dear Mr. Hill and Mr. Palkowitz:

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

Written Comments

Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on January 26, 2024**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

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

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

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

Hearing

This matter is set for hearing on **Friday, March 22, 2024**, at 10:00 a.m. The Proposed Decision will be issued on or about March 8, 2024.

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

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

Sincerely,



Heather Halsey
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Education Code Section 35292.6

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

Public School Restrooms: Menstrual Products

22-TC-04

Hesperia Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim alleges new state-mandated activities and costs arising from Statutes 2021, chapter 664 (the test claim statute), the Menstrual Equity for All Act of 2021, that repeals and adds section 35292.6 to the Education Code, effective January 1, 2022, and operative July 1, 2022. The test claim statute requires, on or before the start of the 2022-2023 school year, that “a public school, including a school operated by a school district, county office of education, or charter school,”¹ maintaining any combination of classes from grade 6 to grade 12, inclusive, stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom, with an adequate supply of menstrual products, defined as tampons and menstrual pads, at all times, and prohibits schools from charging for any menstrual products provided to pupils.² The test claim statute also requires these schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone

¹ Education Code section 35292.6(a) (Stats. 2021, ch. 664).

² Education Code section 35292.6 (Stats. 2021, ch. 664). Government Code section 17519 defines “school district” for purposes of claiming reimbursement under article XIII B, section 6 of the California Constitution as “any school district. . . or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.)

number, for a designated individual responsible for maintaining the requisite supply of menstrual products.³

As explained herein, staff finds that the test claim statute imposes a reimbursable state-mandated program and recommends that the Commission approve this Test Claim beginning January 1, 2022.

Procedural History

The claimant filed the Test Claim on May 12, 2023.⁴ The Department of Finance (Finance) filed comments on the Test Claim on July 20, 2023.⁵ The claimant filed rebuttal comments on August 17, 2023.⁶ Commission staff issued the Draft Proposed Decision on January 5, 2024.⁷

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁸

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551(c) states: “test claims shall be filed not later than	<i>Timely filed</i> – The claimant submitted evidence that it first incurred increased costs

³ Education Code section 35292.6 (AB 367, Stats. 2021, ch. 664).

⁴ Exhibit A, Test Claim, filed May 12, 2023, pages 2, 17, 23.

⁵ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 1.

⁶ Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023, page 1.

⁷ Exhibit D, Draft Proposed Decision, issued January 5, 2024.

⁸ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

Issue	Description	Staff Recommendation
	<p>12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations defines “12 months” as 365 days.⁹</p>	<p>to comply with the test claim statute on July 1, 2022.¹⁰ The Test Claim was filed on May 12, 2023,¹¹ within 365 days of the date the claimant first incurred costs.</p>
<p>Does the test claim statute (Ed. Code, § 35292.6, Stats. 2021, ch. 664), impose a reimbursable state-mandated program?</p>	<p>The test claim statute requires a public school, including a school operated by a school district, county office of education, or charter school,”¹² maintaining any combination of classes from grade 6 to 12, inclusive, to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom, with an adequate supply of menstrual products, defined as menstrual pads and tampons, at all times, and prohibits charging for them. The test claim statute also requires posting a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock menstrual products. The notice shall include the text of the statutory section</p>	<p><i>Approve</i> – The test claim statute imposes a reimbursable state-mandated program on school districts, for schools maintaining any combination of classes from grades 6 through 12, inclusive, on or before the start of the 2022-2023 school year, to:</p> <ul style="list-style-type: none"> • For schools that met the 40% pupil poverty threshold under prior law, to stock an adequate supply of menstrual products, available and accessible, free of cost, in additional restrooms, measured as the sum of all women’s restrooms and all-gender restrooms, and at least one men’s restroom <i>less</i> 50% of all restrooms.

⁹ California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

¹⁰ Exhibit A, Test Claim, filed May 12, 2023, page 2.

¹¹ Exhibit A, Test Claim, filed May 12, 2023, page 1.

¹² Education Code section 35292.6(a) (Stats. 2021, ch. 664).

Issue	Description	Staff Recommendation
	<p>and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.</p> <p>Finance raises concerns that the costs listed in the Test Claim may be overstated and argues that the Commission should deny reimbursement absent evidence that the costs are required by the plain language of the test claim statute or are reasonably necessary.¹³</p>	<ul style="list-style-type: none"> • For schools that <i>did not</i> meet the 40% pupil poverty threshold required to operate a schoolwide program pursuant to 20 U.S.C. §6314(a)(1)(A), to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom, at all times with an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost. • For all schools to post a notice regarding the requirements of the statutory section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the supply of menstrual products. <p>Prior law (Stats. 2017, ch. 687) required schools that maintain any combination of classes from grades 6</p>

¹³ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 1.

Issue	Description	Staff Recommendation
		<p>through 12, inclusive, and that met a 40% pupil poverty threshold (were required to operate a schoolwide program pursuant to 20 U.S.C. §6314(a)(1)(A)) to stock at least 50% of their restrooms with an adequate supply of feminine hygiene products, defined as sanitary napkins and tampons, free of charge. Thus, the requirement to stock menstrual products in restrooms in schools that did not meet the 40% pupil poverty threshold is a new program.</p> <p>Additionally, these grade 6 to 12 schools must now stock any all-gender restrooms and at least one men’s restroom with an adequate supply of menstrual products, which was not required under prior law. Thus, it is a higher level of service on school districts, for schools that met the 40% pupil poverty threshold under prior law, to stock additional restrooms, measured as the sum of all women’s restrooms and all-gender restrooms and at least one men’s restroom /ess 50% of all restrooms as required under prior law.</p> <p>New for all public schools is the requirement to post a notice with specified information in a prominent and conspicuous location in</p>

Issue	Description	Staff Recommendation
		<p>every restroom required to stock menstrual products.¹⁴</p> <p>Moreover, the test claim statute is unique to government,¹⁵ and the statute includes legislative findings and declarations that express how it provides a service to the public.¹⁶</p> <p>Finally, the claimant submitted evidence¹⁷ that supports a finding that the test claim statute results in increased actual costs mandated by the state within the meaning of Government Code sections 17514 and 17556.</p>

Staff Analysis

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

Government Code section 17551 requires that test claims be filed “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”¹⁸ Section 1183.1(c) of the Commission’s regulations defines “12 months” for purposes of filing a test claim as “365 days.”¹⁹

The test claim statute has an effective date of January 1, 2022, and an operative date of July 1, 2022.²⁰ The Test Claim was filed on May 12, 2023,²¹ which is later than 12

¹⁴ Education Code section 35292.6(c), as added by Statutes 2021, chapter 664.

¹⁵ Education Code section 35292.6(a), as added by Statutes 2021, chapter 664.

¹⁶ Statutes 2021, chapter 664, section 1(b).

¹⁷ Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

¹⁸ Government Code section 17551(c).

¹⁹ California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18.

²⁰ Education Code section 35292.6(e), as amended by Statutes 2021, chapter 664, section 3.

²¹ Exhibit A, Test Claim, filed May 12, 2023, page 1.

months following the statute's effective date. However, based on evidence in the record regarding when the claimant first incurred increased costs to comply with the test claim statute, staff finds that the Test Claim is timely filed "within 12 months of incurring increased costs as a result of a statute or executive order."²²

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

B. The Test Claim Statute Imposes a State-Mandated New Program or Higher Level of Service and Costs Mandated by the State on School Districts with Schools that Maintain Any Combination of Grades 6 to 12, Inclusive.

The test claim statute requires, on or before the start of the 2022-2023 school year, a public school, "including a school operated by a school district, county office of education, or charter school,"²³ that maintains any combination of classes from grade 6 to grade 12, inclusive, to stock all women's restrooms, all-gender restrooms, and at least one men's restroom, with an adequate supply of menstrual products, defined as tampons and menstrual pads, at all times, and prohibits schools from charging for any menstrual products provided to pupils.²⁴

The test claim statute also requires these schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.²⁵

Staff finds that the requirements imposed by the test claim statute are new. Under prior law, schools that maintained any combination of grades 6 through 12, inclusive, and met a 40-percent pupil poverty threshold (i.e., schools required to operate a schoolwide program pursuant to 20 U.S.C. § 6314(a)(1)(A)) were required to stock at least 50 percent of their restrooms with an adequate supply of feminine hygiene products (defined as sanitary napkins and tampons) free of charge.²⁶

²² Exhibit A, Test Claim, filed May 12, 2023, page 17, paragraph 1 (Declaration of Dr. George Landon, Deputy Superintendent of Business Services, which declares that costs were incurred "commencing July 1, 2022"), and page 23 (invoice dated August 1, 2022).

²³ Education Code section 35292.6(a) (Stats. 2021, ch. 664).

²⁴ Education Code section 35292.6(a)-(b) (Stats. 2021, ch. 664).

²⁵ Education Code section 35292.6(c) (Stats. 2021, ch. 664).

²⁶ Former Education Code section 35292.6, as enacted by Statutes 2017, chapter 687.

The test claim statute now requires *all* public schools that maintain any combination of grades 6 to 12, inclusive (not only those that met the 40-percent pupil poverty threshold under prior law) to stock menstrual pads and tampons in all women’s restrooms and all-gender restrooms, and at least one men’s restroom, rather than in only 50 percent of their restrooms. For schools that met the 40-percent pupil poverty threshold under prior law, the number of restrooms these schools are required to stock is increased to accommodate a new group of pupils and provide a service to the public. The Legislature enacted the test claim statute to expand access to menstrual products to “transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products” and to “ensure California provides equal access to education. . . irrespective of gender.”²⁷ Thus, for the 40-percent pupil poverty schools, the number of restrooms now required to be stocked to serve this additional pupil population has increased to the sum of all women’s restrooms and all-gender restrooms and at least one men’s restroom, minus 50 percent of all school restrooms that were required to be stocked under prior law.

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

In addition, the requirement to post a notice, to include the statutory text and contact information for a designated individual responsible for maintaining the requisite supply of menstrual products, in a prominent and conspicuous location in every restroom required to stock menstrual products, is also new for all schools maintaining any combination of grades 6 to 12, inclusive.²⁸

Staff finds that these new requirements are mandated by the state. The plain language of the test claim statute states that the schools “*shall* stock . . . adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom” and “*shall* post a notice . . .”²⁹

The mandated requirements are uniquely imposed on government and provide a service to the public. According to the legislative findings and declarations, the statute promotes “gender equity for women, girls, transgender, or gender nonconforming people who may also menstruate; decreasing emotional distress, physical infection, and

²⁷ Statutes 2021, chapter 664, section 1.

²⁸ Education Code section 35292.6(c) (Stats. 2021, ch. 664).

²⁹ Emphasis added. According to Education Code section 75, “‘Shall’ is mandatory and ‘may’ is permissive.” See also, *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815, where the court held that legal compulsion occurs when a statute or executive action uses mandatory language that “ ‘require[s]’ or ‘command[s]’ ” a local entity to participate in a program or service. [citations omitted] [construing the term “mandates” in art. XIII B, § 6 to mean “ ‘orders’ or ‘commands’ ”.]

disease; basic educational equity; preventing or reducing absenteeism and significant performance gaps;" as well as "social disengagement, feelings of alienation, and adverse outcomes."³⁰

Finally, based on evidence in the record,³¹ staff finds that the test claim statute imposes increased actual costs mandated by the state within the meaning of Government Code section 17514, and that no reimbursement exceptions in Government Code section 17556 apply.

Conclusion

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

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

Staff Recommendation

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

³⁰ Statutes 2021, chapter 664, section 1.

³¹ Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

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

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on March 22, 2024. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller, Vice Chairperson	
Jennifer Holman, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Renee Nash, School District Board Member	
Spencer Walker, Representative of the State Treasurer	

Summary of the Findings

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

repeals and adds section 35292.6 to the Education Code, effective January 1, 2022, and operative July 1, 2022. The test claim statute requires, on or before the start of the 2022-2023 school year, “a public school, including a school operated by a school district, county office of education, or charter school,”³² that maintains any combination of classes from grade 6 to grade 12, inclusive, to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom, with an adequate supply of menstrual products, defined as tampons and menstrual pads, at all times, and prohibits schools from charging for any menstrual products provided to pupils.³³ The test claim statute also requires these schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.³⁴

The Commission finds that the Test Claim was timely filed based on the date the claimant first incurred increased costs to comply with the test claim statute.³⁵ The potential reimbursement period begins on the statute’s effective date of January 1, 2022.

The Commission further finds that the test claim statute imposes a reimbursable state-mandated program on school districts, including county offices of education.³⁶ The requirements imposed by the test claim statute are new. Under prior law, schools that maintained any combination of grades 6 through 12, inclusive and met a 40-percent pupil poverty threshold (i.e., schools required to operate a schoolwide program pursuant to 20 U.S.C. § 6314(a)(1)(A)) were required to stock at least 50 percent of their restrooms with an adequate supply of feminine hygiene products (defined as sanitary napkins and tampons) free of charge.³⁷

³² Education Code section 35292.6(a) (Stats. 2021, ch. 664).

³³ Education Code section 35292.6(a)-(b) (Stats. 2021, ch. 664).

³⁴ Education Code section 35292.6 (c) (Stats. 2021, ch. 664, sec. 3).

³⁵ Exhibit A, Test Claim, filed May 12, 2023, pages 17, paragraph 1 (Declaration of Dr. George Landon, Deputy Superintendent of Business Services), 23 (invoice).

³⁶ Government Code section 17519 defines “school district” for purposes of claiming reimbursement under article XIII B, section 6 of the California Constitution as “any school district. . . or county superintendent of schools”. The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.)

³⁷ Former Education Code section 35292.6, as enacted by Statutes 2017, chapter 687.

The test claim statute now requires *all* public schools that maintain any combination of grades 6 to 12, inclusive (not only those that met the 40-percent pupil poverty threshold under prior law) to stock menstrual pads and tampons in all women’s restrooms and all-gender restrooms, and at least one men’s restroom, rather than in only 50 percent of their restrooms. For schools that met the 40-percent pupil poverty threshold under prior law, the number of restrooms these schools are required to stock is increased to accommodate a new group of pupils and provide a service to the public. The Legislature enacted the test claim statute to expand access to menstrual products to “transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products” and to “ensure California provides equal access to education. . . irrespective of gender.”³⁸ Thus, for the 40-percent pupil poverty schools, the number of restrooms now required to be stocked to serve this additional pupil population has increased to the sum of all women’s restrooms and all-gender restrooms and at least one men’s restroom, minus 50 percent of all school restrooms that were required to be stocked under prior law.

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

In addition, the requirement to post a notice, to include the statutory text and contact information for a designated individual responsible for maintaining the requisite supply of menstrual products, in a prominent and conspicuous location in every restroom required to stock menstrual products, is also new for all schools maintaining any combination of grades 6 to 12, inclusive.³⁹

The Commission finds that these new requirements are mandated by the state. The plain language of the test claim statute states that the schools “*shall* stock . . . adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom” and “*shall* post a notice . . .”⁴⁰

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

³⁸ Statutes 2021, chapter 664, section 1.

³⁹ Education Code section 35292.6(c), as added by Statutes 2021, chapter 664.

⁴⁰ Emphasis added. According to Education Code section 75, “‘Shall’ is mandatory and ‘may’ is permissive.” See also, *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815, where the court held that legal compulsion occurs when a statute or executive action uses mandatory language that “ ‘require[s]’ or ‘command[s]’ ” a local entity to participate in a program or service. [citations omitted] [construing the term “mandates” in art. XIII B, § 6 to mean “ ‘orders’ or ‘commands’ ”.]

people who may also menstruate; decreasing emotional distress, physical infection, and disease; basic educational equity; preventing or reducing absenteeism and significant performance gaps;” as well as “social disengagement, feelings of alienation, and adverse outcomes.”⁴¹

Finally, based on evidence in the record,⁴² the Commission finds that the test claim statute imposes increased actual costs mandated by the state within the meaning of Government Code section 17514, and that no reimbursement exceptions in Government Code section 17556 apply.

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

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|---|
| 01/01/2022 | Education Code section 35292.6, Statutes 2021, chapter 664 (AB 367), became effective, and was operative on July 1, 2022. |
| 05/12/2023 | The claimant filed the Test Claim. ⁴³ |
| 07/20/2023 | The Department of Finance (Finance) filed comments on the Test Claim. ⁴⁴ |
| 08/17/2023 | The claimant filed rebuttal comments. ⁴⁵ |
| 01/05/2024 | Commission staff issued the Draft Proposed Decision. ⁴⁶ |

II. Background

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

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

The test claim statute adds section 35292.6 to the Education Code, with an operative date of July 1, 2022, to require “a public school operated by school districts, county offices of education, or charter school maintaining any combination of classes from grades 6 through 12, inclusive,” to stock all women’s restrooms, all-gender restrooms, and at least one men’s restroom with menstrual products (defined as tampons and menstrual pads), free of cost to the pupils, on or before the start of the 2022-2023 school year. The test claim statute also requires these schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every

⁴¹ Statutes 2021, chapter 664, section 1.

⁴² Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

⁴³ Exhibit A, Test Claim, filed May 12, 2023.

⁴⁴ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023.

⁴⁵ Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023.

⁴⁶ Exhibit D, Draft Proposed Decision, issued January 5, 2024.

restroom required to stock menstrual products, available and accessible, free of cost. This notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products. These requirements are in section 3 of the test claim statute that states:

- (a) On or before the start of the 2022–23 school year, a public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, shall stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom.
- (b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils.
- (c) A public school described in subdivision (a) shall post a notice regarding the requirements of this section in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost, pursuant to this section. This notice shall include the text of this section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.
- (d) For purposes of this section, “menstrual products” means menstrual pads and tampons for use in connection with the menstrual cycle.
- (e) This section shall become operative on July 1, 2022.⁴⁷

Section 2 of the test claim statute repeals former Education Code section 35292.6, (Stats. 2017, ch. 687) which required schools that maintained any combination of classes from grades 6 through 12, inclusive, and that met the 40-percent pupil poverty threshold of Section 6314(a)(1)(A) of Title 1 of the United States Code, to stock at least 50 percent of the school’s restrooms with feminine hygiene products, defined as sanitary napkins and tampons used in connection with the menstrual cycle, and forbade schools from charging for any menstrual products. The test claim statute made this former section inoperative on June 30, 2022, and repealed it as of January 1, 2023, replacing it with the new section 35292.6 quoted above, operative July 1, 2022. The repealed statute was the subject of the Commission’s Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01,⁴⁸ with a period of reimbursement beginning January 1, 2018.

⁴⁷ Education Code section 35292.6 (Stats 2021, ch. 664).

⁴⁸ Exhibit X, Commission on State Mandates, Test Claim Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted May 24, 2019.

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

- (a) This act shall be known, and may be cited, as the Menstrual Equity for All Act of 2021.
- (b) The Legislature finds and declares all of the following:
 - (1) California recognizes that access to menstrual products is a basic human right and is vital for ensuring the health, dignity, and full participation of all Californians in public life.
 - (2) California has an interest in promoting gender equity, not only for women and girls, but also for transgender men, nonbinary, and gender nonconforming people who may also menstruate and experience inequities resulting from lack of access to menstrual products.
 - (3) Inadequate menstrual support is associated with both health and psychosocial issues, particularly among low-income people. A lack of access to menstrual products can cause emotional distress, physical infection, and disease.
 - (4) Equal opportunity to education is a fundamental right recognized by the California Constitution. Section 5 of Article IX of, subdivision (a) of Section 7 of Article I of, and subdivision (a) of Section 16 of Article IV of, the California Constitution require the state to maintain and operate the public school system in a manner that provides basic educational equity to students.
 - (5) California has an interest in creating safe, welcoming, and inclusive schools for all students. Subdivision (b) of Section 201 of the Education Code, in particular, requires all preschool, elementary, and secondary schools to affirmatively combat racism, sexism, and other forms of bias.
 - (6) Research shows that students lacking access to menstrual products experience higher rates of absences and are less able to focus and engage in the classroom. Absenteeism can lead to significant performance gaps and is linked to social disengagement, feelings of alienation, and adverse outcomes even into adulthood.
 - (7) The provision of menstrual products in schools helps ensure California provides equal access to education and enables students to reach their full potential, irrespective of gender.
 - (8) Expanding student access to menstrual products can result in increased attendance rates. After the City of New York passed a law providing free menstrual products to students, participating schools saw a 2.4 percent increase in attendance.

- (9) Expanding student access to menstrual products can also result in cost savings due to increased funding associated with student attendance and reduced administrative costs and expenses from charging for menstrual products.
- (c) It is the intent of the Legislature that this act provide for the health, dignity, and safety of menstruating students at every socioeconomic level, normalize menstruation among all genders, and foster gender competency in California schools, colleges, and universities.

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

Having convenient and free access to menstrual products will help students in our schools, similar to the way that toilet paper is provided to respond to routine biological functions. By providing menstrual products in schools, California helps ensure its students have equal access to education and are empowered to reach their full potential, irrespective of their gender or economic status.⁴⁹

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

- 1) Two-thirds of teens have felt stress due to lack of access to period products.
- 2) 20% have struggled to afford period products or were not able to purchase them at all.
- 3) 61% have worn a tampon or pad for more than four hours because they did not have enough access to period products (which puts them at risk of infection and TSS).
- 4) 84% have either missed class time or know someone who missed class time because they did not have access to period products.
- 5) 25% have missed class because of lack of access to period products.
- 6) 83% think lack of access to period products is an issue that is not talked about enough.
- 7) 66% do not want to be at school when they are on their period.
- 8) 69% feel embarrassed when they have to bring period products to the bathroom.

⁴⁹ Exhibit X, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 367 (2021-2022), as amended August 26, 2021, page 5.

- 9) The majority (51%) of students feel like their school does not care about them if they do not provide free period products in their bathrooms.
- 10) 51% have missed at least part of a class or class period due to menstruation symptoms such as cramps.⁵⁰

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

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

According to data from the California Department of Education, about 1.2 million females enrolled in grades 6-12 in the 2018-19 school year. Subtracting the number of students already receiving free menstrual products through existing law, about 500,000 female students remain.⁵¹

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

Prior law required public schools to stock at least 50 percent of the schools' restrooms with feminine hygiene products (defined as tampons and sanitary napkins), if the school maintained any combination of classes from grades 6 to 12, inclusive, and met the 40-percent pupil poverty threshold of Section 6314(a)(1)(A) of Title 1 of the United States

⁵⁰ Exhibit X, Assembly Rules Committee, Assembly Concurrence in Senate Amendments, Analysis of AB 367 (2021-2022), as amended August 26, 2021, pages 1-2.

⁵¹ Exhibit X, Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2.

Code.⁵² This statute was made inoperative and replaced by the test claim statute effective July 1, 2022. The former statute was the subject of the Commission’s Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, which was approved for reimbursement beginning January 1, 2018.⁵³

Preexisting law requires that for grades kindergarten through 12, schools must ensure that restrooms are kept open during school hours and “shall at all times be maintained and cleaned regularly, fully operational and stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.”⁵⁴ This statute was recently amended by newly-enacted Senate Bill 760, approved by the Governor on September 23, 2023, requiring that every K-12 schoolsite have at least one all-gender restroom by July 1, 2026.⁵⁵

Education Code section 17002 defines the “Good Repair” standard for school facilities,⁵⁶ including school restrooms, to mean clean, safe, and functional as determined pursuant to the Facility Inspection Tool (FIT) created by the Office of Public School Construction (OPSC) or a local evaluation instrument that meets the same criteria.⁵⁷ The minimum restroom evaluation criteria require that the restrooms and restroom fixtures “(i) are functional, (ii) appear to be maintained and stocked with supplies regularly, (iii) appear to be accessible to pupils during the schoolday, and (iv) appear to be in compliance with Section 35292.5.”⁵⁸ The FIT developed by the OPSC as revised in 2022 includes evaluating the degree to which restrooms are maintained

⁵² Education Code section 35292.6, as added by Statutes 2017, chapter 687 (AB 10).

⁵³ Exhibit X, Commission on State Mandates, Test Claim Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted May 24, 2019, https://csm.ca.gov/decisions/18-tc-01_decision.pdf (accessed on September 12, 2023), footnote 55, pages 10-11.

⁵⁴ Education Code section 35292.5(a)(1).

⁵⁵ Education Code section 35292.5(b) (Stats 2023, ch. 227).

⁵⁶ Education Code section 17002 was pled in *Williams Case Implementation I, II, III*, 05-TC-04; 07-TC-06; 08-TC-01 and was denied by the Commission on the ground that the requirement to maintain schools in good repair is not new but is a longstanding requirement of statutory and common law, and the statute’s definition of “good repair” only clarified existing law. In addition, all the activities claimed in relation to school facilities programs utilizing the section 17002 good repair definition were voluntary. Commission on State Mandates, Test Claim Decision on *Williams Case Implementation I, II, III*, 05-TC-04, 07-TC-06, 08-TC-01, adopted December 7, 2012, <https://csm.ca.gov/decisions/506.pdf> (accessed on December 6, 2023), pages 48-51 .

⁵⁷ Education Code section 17002(d)(1).

⁵⁸ Education Code section 17002(d)(1)(M).

and cleaned regularly; are fully operational; are stocked with toilet paper, soap, and paper towels; and are open during school hours.⁵⁹

Education Code section 33126 requires that the safety, cleanliness, and adequacy of school facilities, including school restrooms, including any needed maintenance to ensure good repair as specified in sections 17014, 17032.5, 17070.75(a), and 17089(b), be reported on the School Accountability Report Card (SARC).⁶⁰ “Good repair” for the purpose of SARC has the same meaning as specified in Section 17002(d).⁶¹ The SARCs must be prepared annually and disseminated to the public.⁶²

As a part of the Local Control Funding Formula,⁶³ Education Code section 52060 incorporated the requirement to maintain schools in “good repair” as defined in Education Code section 17002(d)(1) into one of the eight state priorities, the “Priority 1/Basic Services,”⁶⁴ and requires, to the extent practicable, that the data in the Local Control Accountability Plan be reported in a manner consistent with how information is reported on the SARC.⁶⁵

In addition, preexisting law requires that pupils “be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions,

⁵⁹ Exhibit X, Office of Public School Construction (OPSC), Facility Inspection Tool (FIT), revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on September 5, 2023), page 4.

⁶⁰ Education Code section 33126(b)(8). Education Code section 33126(b) (as amended by Stats. 2004, ch. 900 § 10 (SB 550)) was pled in *Williams Case Implementation I, II, III*, 05-TC-04; 07-TC-06; 08-TC-01 and was partially approved by the Commission, including to report any needed maintenance to ensure good repair on the SARC. See Commission on State Mandates, Test Claim Decision on *Williams Case Implementation I, II, III*, 05-TC-04, 07-TC-06, 08-TC-01, adopted December 7, 2012, <https://csm.ca.gov/decisions/506.pdf> (accessed on November 29, 2023).

⁶¹ Education Code section 17014(d).

⁶² Education Code section 33126.

⁶³ Education Code section 42238.02 is the local control funding formula that establishes grade span adjusted base grant funding for average daily attendance for school districts with supplemental and concentration grant add-ons for each school district’s percentage of unduplicated count for English Learners, free and reduced-price meal eligible pupils and foster youth pupils.

⁶⁴ Education Code section 52060(a)-(d).

⁶⁵ Education Code section 52060(a)-(d). The governing boards of school districts are required to adopt a three-year Local Control Accountability Plan (LCAP), using a template adopted by the state board, describing annual goals for all pupils and each subgroup, including the low-income subgroup, and specific actions the districts will take each year to achieve the goals identified in the LCAP for each of the state priorities.

and use facilities consistent with their gender identities, irrespective of the gender listed on the pupils' records."⁶⁶

III. Positions of the Parties

A. Hesperia Unified School District

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

- (i) Developing and implementing internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products.
- (ii) Training certificated, classified and other personnel to administer the availability of menstrual products in the district's restrooms.
- (iii) Purchasing and installing dispensers in the schools and campus restrooms.
- (iv) Purchasing and stocking the schools and campus restrooms with menstrual products at all times.⁶⁷

The test claim narrative also recognizes the requirement to post a notice in the restrooms regarding the availability of the menstrual products.⁶⁸

The claimant submitted a declaration signed under penalty of perjury by the District's Deputy Superintendent of Business Services, identifying costs of \$43,625.73 for the 2022-2023 school year to comply with the test claim statute. This includes \$37,442.05 for dispensers and \$3,299.92 for installation, and \$2,883.76 for menstrual products.⁶⁹ The claimant further alleges costs of \$2,883.76 for the 2023-2024 school year and estimates \$5 million in statewide costs.⁷⁰

In response to arguments by Finance, the claimant states that the test claim statute requires it to install dispensers in 100 additional restrooms, for which it incurred increased costs. The claimant also says that it removed specified costs of \$365.45 for "Kleenex" products from its claim.⁷¹ Further, the claimant maintains that the Parameters and Guidelines for Test Claim *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, authorize reimbursement for dispensers, but states that dispenser reimbursement may be decided during the Parameters and Guidelines process.⁷² Regarding the K-12 Mandate Block Grant that provided reimbursement for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, the claimant notes that it covers approximately 49 mandates and is insufficient for the increased cost of this

⁶⁶ Education Code section 221.5 (Stats. 2014, ch. 71).

⁶⁷ Exhibit A, Test Claim, filed May 12, 2023, page 12.

⁶⁸ Exhibit A, Test Claim, filed May 12, 2023, pages 6, 11.

⁶⁹ Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

⁷⁰ Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

⁷¹ Exhibit C, Claimant's Rebuttal Comments, filed August 17, 2023, page 2.

⁷² Exhibit C, Claimant's Rebuttal Comments, filed August 17, 2023, pages 2-3.

mandate.⁷³ Finally, the claimant objects to comments filed by Finance on the basis that they do not comply with sections 1183.2 and 1187.5 of the Commission’s regulations because they include representations of fact that are not signed under penalty of perjury and are not supported by documentary evidence, so according to the claimant, the Commission should disregard them.⁷⁴

B. Department of Finance

Finance raises concerns that the costs identified in the Test Claim may be overstated and argues that the Commission should deny reimbursement absent evidence that the costs are required by the plain language of the test claim statute or are reasonably necessary to comply with the mandate.⁷⁵ Specifically, Finance maintains that the test claim statute does not require installing dispensers for the menstrual products, but admits that they may be reasonable if installed on a one-time basis, and if the claimant supplies sufficient evidence. Finance also asserts that menstrual products are not required in more than one men’s restroom or in staff restrooms or in school restrooms not required by the test claim statute.⁷⁶ And Finance points out that prior law (AB 10, former Ed. Code, §35292.6, Stats. 2017, ch. 687) required schools that met a 40-percent pupil poverty threshold to stock at least 50 percent of restrooms with menstrual products, so it is unclear whether the claimant met these AB 10 requirements, which would diminish the need to install additional dispensers to comply with the test claim statute.⁷⁷

According to Finance, the claimant should provide evidence of the number of its school restrooms that are eligible under the test claim statute, and an explanation of the number of dispensers purchased, including whether the restroom was already equipped with a dispenser and if so, why it was insufficient to comply with the mandate.⁷⁸ Finance also questions some of the claimant’s listed costs, such as for “sanitaire” and “Kleenex,” arguing that these should be denied as not complying with the test claim statute.⁷⁹ In addition, Finance states that the claimant should provide justification explaining whether any of the claimed costs were previously resolved through the *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01 mandate and subsequent K-12 Mandates Block Grant Adjustment.⁸⁰ Finance also disputes the claim to develop and implement policies and provide training for the purchase, installation, stocking, and administration of menstrual products, arguing that these are included within the existing

⁷³ Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023, page 3.

⁷⁴ Exhibit C, Claimant’s Rebuttal Comments, filed August 17, 2023, page 3.

⁷⁵ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 1.

⁷⁶ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 2.

⁷⁷ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 2.

⁷⁸ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 2.

⁷⁹ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, pages 2-3.

⁸⁰ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 3.

activities of a school district under Education Code section 35292.5, which requires schools to “maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap and paper towels or functional hand dryers.” Finance also “believes that the claimant should remove these activities from the test claim entirely, as they are not necessary to implement the provisions of AB 367.”⁸¹

IV. Discussion

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

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

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁸² Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁸³

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁸⁴
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁸⁵
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or

⁸¹ Exhibit B, Finance’s Comments on the Test Claim, filed July 20, 2023, page 3.

⁸² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁸³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁸⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁸⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

executive order and it increases the level of service provided to the public.⁸⁶

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁸⁷

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.⁸⁸ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁸⁹ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁹⁰

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

Government Code section 17551 states that Test Claims must be filed “not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”⁹¹ Section 1183.1(c) of the Commission’s regulations defines “12 months” for purposes of filing a test claim as “365 days.”⁹²

The test claim statute has an effective date of January 1, 2022, and an operative date of July 1, 2022.⁹³ The Legislature often postpones the operation of a statute until a later date to allow “persons and agencies affected by it to become aware of its existence and

⁸⁶ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

⁸⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁸⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

⁸⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁹⁰ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

⁹¹ Government Code section 17551(c).

⁹² California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018.)

⁹³ Education Code section 35292.6(e), as amended by Statutes 2021, chapter 664, section 3.

to comply with its terms.”⁹⁴ Here, the test claim statute states that the restrooms must be stocked “[o]n or before the start of the 2022–23 school year.”⁹⁵

The Test Claim was filed on May 12, 2023,⁹⁶ which is later than 12 months following the statute’s effective date.

Government Code section 17551(c) also allows a timely test claim filing “within 12 months of incurring increased costs as a result of a statute or executive order.” In this case, the claimant filed a declaration signed under penalty of perjury by the District’s Deputy Superintendent for Business Services that declares, “I have personal knowledge of the actual and estimated costs incurred by the District for the Public School Restrooms (“PSR”) Menstrual Products program *commencing on July 1, 2022.*”⁹⁷ The test claim also includes invoices for the purchase of menstrual products for the district’s schools, with the earliest invoice dated August 1, 2022 for the purchase of menstrual products for Sultana High School.⁹⁸ Based on the May 12, 2023 Test Claim filing date, which is within 12 months of incurring increased costs as a result of a statute from either July 1, 2022 (as declared under penalty of perjury), or August 1, 2022 (the date of the earliest invoice) the Commission finds that the Test Claim was timely filed.⁹⁹

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

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

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

The test claim statute requires, on or before the start of the 2022–2023 school year, “a public school, including a school operated by a school district, county office of education, or charter school” maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school’s restrooms at all times with an adequate supply of menstrual products (defined as tampons and menstrual pads) available and accessible,

⁹⁴ *Preston v. Board of Equalization* (2001) 25 Cal.4th 197, 223.

⁹⁵ Education Code section 35292.6 (Stats. 2021, ch. 664).

⁹⁶ Exhibit A, Test Claim, filed May 12, 2023, page 1.

⁹⁷ Exhibit A, Test Claim, filed May 12, 2023, page 17, paragraph 1 (Declaration of Dr. George Landon, Deputy Superintendent of Business Services), emphasis added.

⁹⁸ Exhibit A, Test Claim, filed May 12, 2023, page 23.

⁹⁹ Exhibit A, Test Claim, filed May 12, 2023, page 1.

free of cost, in all women’s restrooms, any all-gender restrooms,¹⁰⁰ and at least one men’s restroom, and prohibits schools from charging for any menstrual products provided to pupils.¹⁰¹ The test claim statute also requires these schools to post a notice regarding the statutory requirements in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.¹⁰²

The test claim statute expressly imposes requirements on “a public school, including a school operated by a school district, county office of education, or charter school” maintaining any combination of classes from grades 6 to 12. Under Government Code section 17514, “school districts” are eligible to seek reimbursement for state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 17519 defines “school district,” as “any school district. . . , or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education.¹⁰³ Thus, as described below, K-12 school districts and county offices of education are eligible to seek reimbursement for the requirements imposed by the test claim statute on behalf of their schools that maintain any of grades 6 through 12, inclusive. These districts are hereafter referred to as “school districts.”

The purpose of article XIII B, section 6 is to prevent the state from forcing extra programs on local government each year in a manner that negates their careful budgeting of increased expenditures counted against the local government’s annual spending limit and thus, article XIII B, section 6 requires a showing that the test claim statute mandates *new* activities compared to the prior year on school districts.¹⁰⁴

¹⁰⁰ Senate Bill 760 (Stats 2023, ch. 227), approved by the Governor on September 23, 2023, requires that every K-12 schoolsite have at least one all-gender restroom by July 1, 2026.

¹⁰¹ Education Code section 35292.6(a)-(b), as amended by Statutes 2021, chapter 664.

¹⁰² Education Code section 35292.6, as amended by Statutes 2021, chapter 664.

¹⁰³ Education Code section 1010. County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.)

¹⁰⁴ California Constitution, articles XIII B, sections 1, 8(a) and (b); *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1595; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763.

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

The Commission finds that the phrase in the test claim statute requiring that a school meet the “40 percent *pupil* poverty threshold required to operate a schoolwide program” means only those schools that are eligible for Title I, Part A funds and meet the second test identified in section 6314(a)(1)(A) of Title 20 of the United States Code, in which not less than 40 percent of the children *enrolled* in the school are from low-income families.¹⁰⁵

The phrase “feminine hygiene products” used in former section 35292.6 was defined as “sanitary napkins and tampons.”¹⁰⁶ The dictionary defines ‘sanitary napkin’ as “a pad of absorbent material, as cotton, worn by women during menstruation to absorb the uterine flow.”¹⁰⁷ This is the same as ‘menstrual products,’ which is defined in the test claim statute as “menstrual pads and tampons for use in connection with the menstrual cycle”¹⁰⁸ Thus, the menstrual products required to be stocked are the same as under prior law.

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

¹⁰⁵ Exhibit X, Commission on State Mandates, Test Claim Decision on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted May 24, 2019, https://csm.ca.gov/decisions/18-tc-01_decision.pdf (accessed on September 12, 2023), page 15. Emphasis in original.

¹⁰⁶ Former Education Code section 35292.6 (Stats. 2017, ch. 687).

¹⁰⁷ “Sanitary Napkin” at www.dictionary.com.

¹⁰⁸ Education Code section 35292.6(d), as added by Statutes 2021, chapter 664.

of gender.”¹⁰⁹ Thus, for these 40-percent pupil poverty schools, the number of restrooms now required to be stocked to serve this additional pupil population is increased to the sum of all women’s restrooms and all-gender restrooms and at least one men’s restroom, minus 50 percent of all school restrooms required to be stocked under prior law.

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

In addition, the requirement to post a notice in a prominent and conspicuous location in every restroom required to stock menstrual products, available and accessible, free of cost, is new for all schools that maintain any of grades 6 through 12, inclusive. The notice shall include the text of the statutory section and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.¹¹⁰

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

Legal compulsion occurs when a statute or executive action uses mandatory language that “require[s]’ or ‘command[s]” a local entity to participate in a program or service. [citations omitted] [construing the term “mandates” in art. XIII B, § 6 to mean “orders’ or ‘commands’”].) Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey.¹¹¹

According to Education Code section 75, “‘Shall’ is mandatory and ‘may’ is permissive.” The plain language of the test claim statute states that the schools “*shall* stock . . . an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom” and

¹⁰⁹ Statutes 2021, chapter 664, section 1. It is this expanded population of transgender or gender nonconforming pupils that the test claim statute is intended to serve that makes the required service new. This factor distinguishes this test claim statute from the statute at issue in *Extended Conditional Voter Registration*, 20-TC-02, in which the Commission found that the test claim statute simply increased costs, but did not impose a new program a higher level of service because it merely expanded the same service to additional locations for the same population of people.

¹¹⁰ Education Code section 35292.6(c), as added by Statutes 2021, chapter 664.

¹¹¹ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th. 800, 815. See also *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

“shall post a notice ...”¹¹² Therefore, the new requirements imposed by the test claim statute are mandated by the state.

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

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

The claimant also seeks reimbursement for:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products.
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the district’s restrooms.
- (iii) Purchasing and installing dispensers in the schools and campus restrooms.¹¹³

These activities and costs are not mandated by the plain language of the test claim statute, but they may be proposed for inclusion in the Parameters and Guidelines if they are supported by evidence in the record showing they are “reasonably necessary for the performance of the state-mandated program” in accordance with Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

¹¹² Emphasis added.

¹¹³ Exhibit A, Test Claim, filed May 12, 2023, pages 12, 18, 20.

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

Article XIII B, section 6 requires reimbursement whenever the Legislature or any state agency mandates a new program or higher level of service that results in costs mandated by the state. “New program or higher level of service” is defined as “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.”¹¹⁴ Only one of these alternatives is required to establish a new program or higher level of service.¹¹⁵

As explained above, the mandated activities are new. In addition, the test claim statute is both unique to government and intended to provide a service to the public. The requirements to stock restrooms with menstrual products and post notices apply to school districts maintaining schools with any combination of grades from 6 to 12,¹¹⁶ so its requirements are imposed uniquely on government.

The test claim statute also provides a service to the public. The statute’s legislative findings and declarations extol various services to the public, stating: “access to menstrual products is a basic human right vital for ensuring health, dignity and full participation of all Californians in public life.”¹¹⁷ The Legislature also identifies gender equity for women, girls, transgender, or gender nonconforming people who may also menstruate; decreasing emotional distress, physical infection, and disease; basic educational equity; preventing or reducing absenteeism and significant performance gaps, as well as “social disengagement, feelings of alienation, and adverse outcomes.”¹¹⁸

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

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

The last issue is whether these new activities result in increased costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or

¹¹⁴ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

¹¹⁵ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

¹¹⁶ Education Code section 35292.6(a), as added by Statutes 2021, chapter 664.

¹¹⁷ Statutes 2021, chapter 664, section 1(b).

¹¹⁸ Statutes 2021, chapter 664, section 1.

executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim nor any payment shall be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

The claimant alleges increased costs to comply with the test claim statute, backed by a declaration signed under penalty of perjury by the District's Deputy Superintendent for Business Services¹¹⁹ and copies of receipts.¹²⁰ Specifically, the District's Deputy Superintendent for Business Services declares increased costs of \$43,625.73 for the 2022-2023 school year, which includes \$37,442.05 for dispensers and \$3,299.92 for installation, and \$2,883.76 for menstrual products.¹²¹ The claimant further alleges costs of \$2,883.76 for the 2023-2024 school year and estimates \$5 million in statewide costs.¹²² Thus, the claimant has put evidence in the record that it has incurred costs mandated by the state in excess of \$1,000.¹²³

Additionally, no law or facts in the record support a finding that the exceptions specified in Government Code section 17556 apply to this claim. There is nothing in the record to indicate that additional funds have been made available for the new state-mandated activities.¹²⁴ Nor do school districts have fee authority to pay the costs of the alleged mandate,¹²⁵ since the statute expressly prohibits charging pupils for the menstrual products.¹²⁶

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

V. Conclusion

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

¹¹⁹ Exhibit A, Test Claim, filed May 12, 2023, pages 17-20 (Declaration of Dr. George Landon, Deputy Superintendent of Business Services).

¹²⁰ Exhibit A, Test Claim, filed May 12, 2023, pages 21-30 (receipts).

¹²¹ Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

¹²² Exhibit A, Test Claim, filed May 12, 2023, pages 13-14, 18-30.

¹²³ Government Code section 17564.

¹²⁴ Government Code section 17556(e).

¹²⁵ Government Code section 17556(d).

¹²⁶ Education Code section 35292.6(b), as added by Statutes 2021, chapter 664.

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

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 January 5, 2024, I served the:

- **Current Mailing List dated January 5, 2024**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued January 5, 2024**

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 5, 2024 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/5/24

Claim Number: 22-TC-04

Matter: Public School Restrooms: Menstrual Products

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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January 26, 2024
*Commission on
State Mandates*

January 26, 2024

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

**Response to Draft Proposed Decision Test Claim 22-TC-04, Public School Restrooms:
Menstrual Products**

Dear Heather Halsey:

As requested in your letter dated January 5, 2024, the Department of Finance has reviewed the Draft Proposed Decision for test claim 22-TC-04 titled "Public School Restrooms: Menstrual Products" and hereby submits the following comments.

Finance continues to have concerns regarding costs identified in the Draft Proposed Decision. The claimant Hesperia Union School District (Claimant) seeks reimbursement for developing and implementing policies, as well as providing training relating to the purchase, installation, stocking, and administration of menstrual products, as new activities to implement provisions of AB 367. Finance contends that these activities are included within existing activities of a school district, as shown by the fact that no costs are reflected in the test claim. Education Code section 35292.5 requires all schools, with few exceptions, to maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap and paper towels or functional hand dryers. Furthermore, the Decision and Parameters and Guidelines for the Public School Restrooms: Feminine Hygiene Products Mandate (18-TC-01) denied the costs related to training personnel and developing school policies and procedures because there was no evidence explaining why the proposed activities were reasonably necessary to comply with the mandate. Consistent with the Decision on 18-TC-01, Finance urges the Commission to deny these activities since they are not required by the plain language of the test claim statute.

Additionally, the Claimant indicated that the funding from the K-12 Mandate Block Grant was not sufficient to cover the costs related to this test claim. Finance continues to have concerns with the costs identified because it is unclear what additional funding amount is needed to comply with this mandate that was not previously resolved in the 18-TC-01 mandate and subsequent K-12 Mandate Block Grant funding.

Finally, Finance continues to have concerns that costs may be overstated in the test claim. The Claimant seeks reimbursement for an additional 100 dispensers, and it is unclear whether the number of restrooms identified by the Claimant would all be required to install dispensers to comply with this mandate. Finance maintains that reimbursement is not required to install dispensers or other distribution devices to more than one men's restroom, in staff restrooms, in school restrooms not required by statute, or to replace, repair or retrofit dispensers already installed in the restrooms without sufficient justification. However, if the Claimant provides sufficient evidence, the purchase and installation of menstrual product dispensers, or other distribution devices, for every women's and all-gender restrooms, and at least one men's restroom, may be reasonable on a one-time basis to ensure statutory requirements set by Education Code section 35292.6 are met.

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

Sincerely,

Chris Ferguson

Chris Ferguson
Program Budget Manager

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

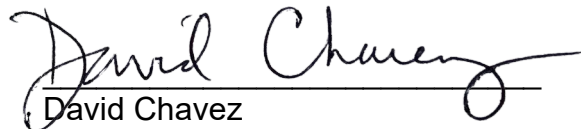
On January 26, 2024, I served the:

- **Current Mailing List dated January 19, 2024**
- **Finance's Comments on the Draft Proposed Decision filed January 26, 2024**

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

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

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



David Chavez
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/19/24

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

Matter: Public School Restrooms: Menstrual Products

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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Exhibit F

January 26, 2024

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

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

Dear Ms. Halsey:

Hesperia Union School District (“Claimant”) has reviewed the Department of Finance (“Finance”) comments dated January 26, 2024, in response to the Test Claim 22-TC-04, submitted to the Commission on State Mandates (Commission) draft proposed decision to approve the aforementioned test claim. Claimant provides the following rebuttal comments.

A. Introduction

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

Claimant withdraws request for reimbursement for the following activities:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of menstrual products.
- (ii) Train certificated, classified and other personnel to administer the availability of menstrual products in the district’s restrooms.

Finance fails to provide any evidence supporting their “concerns with the costs identified.” The costs submitted by the claimant meet the threshold to approve the test claim. Other issues of costs may be addressed during the parameters and guidelines process.

Claimant has submitted admissible evidence of the purchase and installation of menstrual product dispensers, for every women’s and all-gender restrooms, and at least one men’s restroom to ensure statutory requirements set by Education Code section 35292.6 are met. Finance concerns that costs may be overstated in the test claim are not supported by admissible evidence and are speculative.

Finance’s Comments Fail To Comply With Statutory Requirements.

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

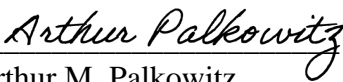
Finance comments fail to include the required oath and affirmation. Nor were the comments supported with documentary evidence. Accordingly, Commission shall disregard comments submitted by Finance.

Claimant submits the attached declaration in support of their test claim.

Certification

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

January 26, 2024


Arthur M. Palkowitz
Representative for the Claimant

Test Claim: Public School Restrooms:

Feminine Hygiene Products II (22-TC-04)

Claimants: Hesperia Unified School District

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

SECTION NUMBER: 6
Heading: DECLARATION

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

1. I am currently employed with the District, and I have personal knowledge of the actual and estimated costs incurred by the District for the Test Claim Public School Restrooms: Feminine Hygiene Products II (22-TC-04) (“FHP II”) program commencing on July 1, 2022. The information contained in my declaration is from preparing and reviewing District business records, my personal knowledge and information or belief pertaining to the FHP II program.

2. Test Claim Public School Restrooms: Feminine Hygiene Products II (22-TC-04) requires the Claimant to stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom. (Assembly Bill No. 367; Statutes 2021, Chapter 664 Section 3 (a),(b),(c),(d) and Education Code Section 35292.6 (a),(b),(c),(d).)

3. The requirement to stock the school’s restrooms at all times with an adequate supply of menstrual products, available and accessible, free of cost, in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom requires the Claimant to install dispensers in restrooms as a reasonable delivery method to provide an adequate supply of menstrual products and appropriately configured dispensers is reasonably necessary for the performance of the state-mandated activity. If some schools were already equipped with a sufficient number of suitable dispensers in their restrooms, they would not need to incur increased costs to buy new dispensers. In addition, some schools may have existing dispensers, including coin dispensers, that can be repaired or modified to provide the feminine hygiene products at no cost to the pupils and at a fraction of the cost to purchase new dispensers. Under these circumstances, it would only be necessary to repair or retrofit the dispensers to comply with the mandate and would not be necessary to incur increased costs to buy all new dispensers.

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

Test Claim: Public School Restrooms:

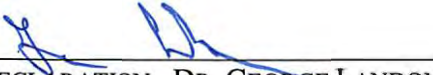
Feminine Hygiene Products II (22-TC-04)

Claimants: Hesperia Unified School District

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

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

Dated: January 23, 2023



DECLARATION –DR. GEORGE LANDON
DEPUTY SUPERINTENDENT, BUSINESS SERVICE,
HESPERIA UNIFIED SCHOOL DISTRICT

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 January 31, 2024, I served the:

- **Current Mailing List dated January 29, 2024**
- **Claimant’s Comments on the Draft Proposed Decision filed January 26, 2024**

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

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

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



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/29/24

Claim Number: 22-TC-04

Matter: Public School Restrooms: Menstrual Products

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 367 (Cristina Garcia) – As Amended April 27, 2021

Policy Committee:	Education	Vote:	7 - 0
	Higher Education		11 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: Yes

SUMMARY:

This bill requires various public entities to stock an adequate supply of free menstrual products in all its women’s restrooms and all-gender restrooms and at least one men’s restroom.

Specifically, the bill:

- a) Requires each public school serving students in grades six through twelve to stock an adequate supply of free menstrual products in all women’s restrooms and all-gender restrooms and at least one men’s restroom. The bill also requires the school to post a notice in every restroom required to provide free menstrual products with the requirements of this bill and contact information for the individual responsible for maintaining an adequate supply of menstrual products. The bill specifies these actions must begin with start of the 2022-23 school year.
- b) Requires each California State University (CSU) campuses and each California Community College (CCC) campus to stock an adequate supply of free menstrual products in all women’s restrooms and all-gender restrooms and at least one men’s restroom at times when the campus is open to the general public. The bill also requires the CSU and CCC campuses to post a notice in every restroom required to provide free menstrual products with the requirements of this bill and contact information for the individual responsible for maintaining an adequate supply of menstrual products.
- c) Encourages each University of California (UC) campus and private university and college campus to stock an adequate supply of free menstrual products in all women’s restrooms and all-gender restrooms and at least one men’s restroom at times when the campus is open to the general public. The bill also encourages UC campuses and private university and college campuses to post a notice in every restroom required to provide free menstrual products with the requirements of this bill and contact information for the individual responsible for maintaining an adequate supply of menstrual products.
- d) Requires each public agency maintaining restroom facilities that are open to the public to stock an adequate supply of free menstrual products in all women’s restrooms and all-gender restrooms and at least one men’s restroom at all times. Defines public agency as any agency of the state, a city, a county or a city and county.

FISCAL EFFECT:

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

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

If the CSM determines the bill's requirements to be a reimbursable state mandate, the state would need to reimburse these costs to schools or provide funding through the K-12 Mandate Block Grant.

- 2) One-time Proposition 98 GF costs of about \$5.3 million to CCC campuses to install or modify menstrual product dispensers and ongoing Proposition 98 GF costs of about \$3.4 million to provide free menstrual products. This estimate uses assumptions from the CSM evaluation of costs for certain K-12 schools adjusted by 10%, as described in comment #1, immediately above.

According to data collected by the CCC chancellor's office, in the 2018-19 academic year, about 1.3 million women attended CCCs.

The state would need to reimburse these costs to CCC, if the CSM determines the bill's requirements to be a reimbursable state mandate.

- 3) One-time GF costs of about \$1.2 million to CSU to install or modify menstrual product dispensers and ongoing GF costs of about \$765,000 to provide free menstrual products. This estimate uses assumptions from the CSM evaluation of costs for certain K-12 schools adjusted by 10%, as described in comment #1, above. This estimate is further adjusted by an additional 10% to account for providing free menstrual products at CSU housing when the campus is open to the general public, though the amount of costs to provide products in these locations is unknown.

According to data collected by the CSU chancellor's office, in the 2018-19 academic year, about 270,000 women attended a CSU.

- 4) One-time GF costs of about \$700,000 to UC to install or modify menstrual product dispensers and ongoing GF costs of about \$450,000 to provide free menstrual products. This estimate uses assumptions from the CSM evaluation of costs for certain K-12 schools adjusted by 10%, as described in Fiscal Effect comment #1. This estimate is further adjusted by an additional 15% to account for providing free menstrual products at UC housing and

medical centers when the campus is open to the general public, though costs to provide products in these locations are unknown.

According to data collected by the UC, in the 2018-19 academic year, about 150,000 women attended a UC.

- 5) One-time GF, SF and local costs, of an unknown but significant amount, to public agencies to install or modify menstrual product dispensers. Ongoing GF, SF and local costs, of an unknown but significant amount, to public agencies to provide free menstrual products.

California has 58 counties and 482 cities and many buildings at the state, county and city levels that maintain restroom facilities. These include state department buildings, city halls, county courts, libraries, city parks and many others.

The state would need to reimburse these costs to local agencies, if the CSM determines the bill's requirements to be a reimbursable state mandate.

COMMENTS:

Background. AB 10 (C. Garcia), Chapter 687, Statutes of 2017, requires a school that enrolls any students from grades six through twelve and has a student body where more than 40% of students are low income to stock 50% of restrooms with menstrual products at all times at no cost to students. In May 2019, the CSM found that requirements added by AB 10 impose a reimbursable state-mandated program, beginning January 1, 2018. Specifically, schools could file reimbursement claims for costs related to stocking 50% of restrooms with menstrual products, and purchasing and installing or retrofitting dispensers for menstrual products, to the extent that the school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate.

In December 2020, the CSM published a statewide cost estimate that projects the ongoing costs of the mandate using mandate claim data. The CSM estimates ongoing costs to be \$2.36 per female student in grades six through twelve. Of this, (a) ongoing costs of \$1.90 per female student in grades six through twelve to stock restrooms with menstrual products; (b) one-time cost of \$3.70 per female student in grades six through twelve to purchase and install dispensers for menstrual products for the first year of the mandate's implementation. (The CSM determined that, in future years, these costs fell by 90%, to \$0.37 in ongoing costs); and (c) ongoing costs of \$0.09 per female student as indirect cost associated with complying with the mandate.

To develop a statewide estimate for ongoing costs, starting in the 2019-20 academic year, the CSM applied the \$2.36 rate to its estimate of female students in grades 6-12 at schools with 40% or more low-income students (about 919,000), for total statewide costs of \$2.2 million.

This bill would repeal the requirements of AB 10 for school districts and replace it with a requirement that, by the start of the 2022-23 school year, public schools serving students in grades six through twelve stock an adequate supply of menstrual products in all women's restrooms and all-gender restrooms and at least one men's restroom. The bill places this new requirement on CCCs, CSUs and public agencies with restrooms, and encourages UC to adopt this new requirement.

Analysis Prepared by: Natasha Collins / APPR. / (916) 319-2081

CONCURRENCE IN SENATE AMENDMENTS
AB 367 (Cristina Garcia)
As Amended August 26, 2021
Majority vote

SUMMARY

Requires all public schools serving students in grades 6 to 12 to stock specified restrooms with an adequate supply of free menstrual products, commencing in the 2022-23 school year; and requires the California State University (CSU) and each community college district, and encourages the Regents of the University of California (UC), independent institutions of higher education, and private postsecondary educational institutions, to stock an adequate supply of free menstrual products at no fewer than one designated and accessible central location on each campus.

Senate Amendments

- 1) Require that menstrual products, in all settings required by the measure, be provided free of cost and in an available and accessible manner.
- 2) Require that accessibility of the location at which menstrual products must be made available at postsecondary institutions be determined based on the following factors:
 - a) Hours of operation, relative to hours that students are on campus;
 - b) Proximity to high-traffic areas on campus;
 - c) Accessibility by students of all genders and regardless of physical ability;
 - d) Privacy, including whether accessing products would require interaction with staff or other students; and
 - e) Safety.
- 3) State that these locations at postsecondary institutions may include student centers, libraries, wellness or health centers, pantries, and study rooms.
- 4) State that a campus of a postsecondary institution is not prevented from providing more than one location where persons may access menstrual products.
- 5) Add findings and declarations.

COMMENTS

Adolescents' experience relating to menstruation and school. A 2019 Harris Interactive poll of 2,000 United States teens aged 13 to 19 commissioned by the nonprofit organization PERIOD and a menstrual products company found:

- 1) Two-thirds of teens have felt stress due to lack of access to period products.
- 2) 20% have struggled to afford period products or were not able to purchase them at all.

- 3) 61% have worn a tampon or pad for more than four hours because they did not have enough access to period products (which puts them at risk of infection and TSS).
- 4) 84% have either missed class time or know someone who missed class time because they did not have access to period products.
- 5) 25% have missed class because of lack of access to period products.
- 6) 83% think lack of access to period products is an issue that is not talked about enough.
- 7) 66% do not want to be at school when they are on their period.
- 8) 69% feel embarrassed when they have to bring period products to the bathroom.
- 9) The majority (51%) of students feel like their school does not care about them if they do not provide free period products in their bathrooms.
- 10) 51% have missed at least part of a class or class period due to menstruation symptoms such as cramps.

According to the Author

"Our biology doesn't always send an advance warning when we're about to start menstruating, which often means we need to stop whatever we're doing and deal with a period. Often periods arrive at inconvenient times. They can surprise us during an important midterm, while playing with our children at a park, sitting in a lobby waiting to interview for a job, shopping at the grocery store, or even standing on the Assembly Floor presenting an important piece of legislation. Having convenient and free access to these products means our period will not prevent us from being productive members of society, and would alleviate the anxiety of trying to find a product when out in public."

Arguments in Support

California Latinas for Reproductive Justice writes, "By providing menstrual products in schools, California helps ensure its students have equal access to education and are empowered to reach their full potential, irrespective of their gender or economic status. Research shows that students lacking access to menstrual products experience higher rates of absence and are less able to focus and engage in the classroom. For example, one study found that one in four girls missed class due to a lack of access to menstrual products and that one in five reported not being able to afford menstrual products. A campus chapter of PERIOD at UC Davis surveyed students and reported that 52% of student respondents said they missed class or work in the last school year because they could not access a tampon or pad. Absenteeism can lead to significant performance gaps and is linked to social disengagement, feelings of alienation, and adverse outcomes even into adulthood. Significantly, after New York City passed a law providing free menstrual products to students, participating schools saw a 2.4% increase in attendance. AB 367 is a critical step toward removing barriers to equity for all Californians who menstruate, especially those who have struggled to access menstrual products due to gender or income."

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) This bill could result in one-time Proposition 98 General Fund costs of approximately \$2 million for school districts to install or modify menstrual product dispensers, and additional ongoing Proposition 98 General Fund costs of about \$1.3 million each year to provide free menstrual products. School districts may also incur additional, unknown costs to comply with the bill's restroom noticing requirements. These costs are likely to be deemed reimbursable by the Commission on State Mandates.
- 2) The Chancellor's Office estimates Proposition 98 General Fund costs of between \$57,500 and \$115,000 annually to provide free menstrual products at a centralized location on the 115 community college campuses. There could also be additional one-time costs, likely to be minor, for campuses to comply with the bill's noticing requirements.
- 3) The UC estimates General Fund costs in the low tens of thousands of dollars annually to comply with the bill's requirements, while the CSU indicates General Fund costs of between \$750,000 and \$800,000 each year to provide additional menstrual products for its health centers.

VOTES:

ASM EDUCATION: 7-0-0

YES: O'Donnell, Kiley, Bennett, Megan Dahle, Lee, McCarty, Quirk-Silva

ASM HIGHER EDUCATION: 11-0-1

YES: Medina, Arambula, Bloom, Gabriel, Irwin, Kiley, Levine, Low, Blanca Rubio, Santiago, Valladares

ABS, ABST OR NV: Choi

ASM APPROPRIATIONS: 15-1-0

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow

ASSEMBLY FLOOR: 77-0-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Bigelow, Voepel

SENATE FLOOR: 38-0-2

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Eggman, Stern

SENATE FLOOR: 38-0-2

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Eggman, Stern

SENATE FLOOR: 34-2-4

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

NO: Grove, Melendez

ABS, ABST OR NV: Dahle, Eggman, Jones, Stern

UPDATED

VERSION: August 26, 2021

CONSULTANT: Tanya Lieberman / ED. / (916) 319-2087

FN: 0001602



May 24, 2019

Ms. Erika Li
Department of Finance
915 L Street, 10th Floor
Sacramento, CA 95814

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

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

Re: Decision

Public School Restrooms: Feminine Hygiene Products, 18-TC-01
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)
Desert Sands Unified School District, Claimant

Dear Ms. Li and Mr. Palkowitz:

On May 24, 2019, the Commission on State Mandates adopted the Decision approving the Test Claim on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE TEST CLAIM</p> <p>Education Code Section 35292.6</p> <p>Statutes 2017, Chapter 687 (AB 10)</p> <p>Filed on December 7, 2018</p> <p>Desert Sands Unified School District, Claimant</p>	<p>Case No.: 18-TC-01</p> <p><i>Public School Restrooms: Feminine Hygiene Products</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted May 24, 2019)</i></p> <p><i>(Served May 24, 2019)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 24, 2019. Arthur Palkowitz appeared on behalf of the Desert Sands Unified School District. Susan Geanacou, appeared on behalf the Department of Finance (Finance).

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

The Commission adopted the Proposed Decision to approve the Test Claim by a vote of 7-0, as follows:

Member	Vote
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	Yes
Yvette Stowers, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

This Test Claim alleges that Statutes 2017, chapter 687, which added section 35292.6 to the Education Code, effective January 1, 2018, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The test claim statute requires any public school maintaining any classes from grade 6 to grade 12, inclusive, that meets the 40 percent pupil poverty threshold required to operate a Title I, Part A schoolwide program pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code, to stock at least 50 percent of the school's restrooms with feminine hygiene products, defined as “tampons and sanitary napkins,” at all times. In addition, the test claim statute prohibits schools from charging for any menstrual products, including feminine hygiene products, provided to pupils.

This Test Claim was filed on December 7, 2018, which is within 365 days of the date the test claim statute became effective on January 1, 2018, and is therefore timely filed pursuant to Government Code section 17551 and California Code of Regulations, title 2, section 1183.1(c).¹

The Commission finds that Education Code section 35292.6, as added by Statutes 2017, chapter 687, constitutes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, for school districts with schools identified below to stock 50 percent of such schools’ restrooms with feminine hygiene products (defined as tampons and sanitary napkins) at all times at no cost to pupils. This mandate applies to those schools that

- Maintain any combination of classes from grade 6 to grade 12, inclusive; *and*
- Meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families.

The mandated activity is new. Prior to the enactment of the test claim statute, school districts were required to ensure that every school restroom is maintained and cleaned regularly, and is fully operational and stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.² In addition, prior law requires that school restroom facilities be evaluated as to whether they meet the “good repair” standard.³ Schools are also required by prior law to permit students to use facilities consistent with their gender identity, irrespective of the gender listed on the pupil’s records.⁴ However, there is no requirement in prior law to stock 50 percent of the school's restrooms with feminine hygiene products at all times at no cost to students.

In addition, the mandated activity is uniquely imposed on public schools, as specified in the test claim statute, and provides a service to the public. According to the legislative history, the test claim statute is needed to remove a barrier to girls’ educations because “[n]ot having access to

¹ Exhibit A, Test Claim, page 1.

² Education Code section 35292.5; Education Code section 17002(d)(1); Education Code section 33126(b)(8).

³ Education Code section 17002(d)(1).

⁴ Education Code section 221.5.

these vital medical necessities creates an additional barrier to a young girl’s education. Young girls sometimes miss school because of a lack of access to these products.”⁵ Public education is an essential governmental function.⁶ Thus, the test claim statute imposes a new program or higher level of service.

Finally, based on evidence in the record, the Commission finds that the test claim statute results in increased actual costs mandated by the state within the meaning of Government Code section 17514, and that no exceptions in Government Code section 17556 apply to deny this Test Claim.

COMMISSION FINDINGS

I. Chronology

01/01/2018	The effective date of the test claim statute.
12/07/2018	The claimant filed the Test Claim. ⁷
12/17/2018	Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date.
01/16/2019	The Department of Finance (Finance) filed comments on the Test Claim. ⁸
02/15/2019	The claimant filed rebuttal comments. ⁹
03/05/2019	Commission staff issued the Draft Proposed Decision. ¹⁰
03/26/2019	The claimant filed comments on the Draft Proposed Decision. ¹¹
03/26/2019	Finance filed comments on the Draft Proposed Decision. ¹²

II. Background

This Test Claim addresses Statutes 2017, chapter 687, which added section 35292.6 to the Education Code. Section 35292.6 requires public schools to stock at least 50 percent of the schools’ restrooms with feminine hygiene products (defined as tampons and sanitary napkins), if the school maintains any combination of classes from grade 6 to grade 12, inclusive, and meets a 40 percent pupil poverty threshold specified in federal law for schoolwide Title I program eligibility.

⁵ Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 2.

⁶ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

⁷ Exhibit A, Test Claim, page 1.

⁸ Exhibit B, Finance’s Comments on the Test Claim, page 1.

⁹ Exhibit C, Claimant’s Rebuttal Comments, page 1.

¹⁰ Exhibit D, Draft Proposed Decision.

¹¹ Exhibit E, Claimant’s Comments on the Draft Proposed Decision.

¹² Exhibit F, Finance’s Comments on the Draft Proposed Decision.

A. Prior Law Established Requirements for School Restroom Maintenance and Reporting, and Requires that School Restrooms Be Kept in Good Repair and Stocked at All Times with Toilet Paper, Soap, and Paper Towels or Functional Hand Dryers.

Prior law requires school districts to keep facilities and school restrooms in good repair, and to report any needed maintenance on those facilities as follows:

Restroom Maintenance: Education Code section 35292.5 requires every public and private school enrolling students from kindergarten through grade 12 to ensure that restrooms are kept open during school hours, maintained and cleaned regularly, be fully operational and stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.¹³

Good Repair and the Facilities Inspection System: Education Code section 17002 defines the “Good Repair” standard for school facilities,¹⁴ including school restrooms, to mean that they are clean, safe, and functional as determined pursuant to the Facility Inspection Tool (FIT) created by the Office of Public School Construction (OPSC) or a local evaluation instrument that meets the same criteria.¹⁵ The minimum evaluation criteria for the restrooms require that the restrooms and restroom fixtures (i) are functional, (ii) appear to be maintained and stocked with supplies regularly, (iii) appear to be accessible to pupils during the schoolday, and (iv) appear to be in compliance with Section 35292.5.¹⁶ The FIT developed by the OPSC in 2007 includes the evaluation of the degree to which restrooms are maintained and cleaned regularly; are fully operational; are stocked with toilet paper, soap, and paper towels; and are open during school hours.¹⁷

School Accountability Report Card (SARC): Education Code section 33126 requires that the safety, cleanliness, and adequacy of school facilities, including school restrooms, including any needed maintenance to ensure good repair as specified in sections 17014, 17032.5, 17070.75(a), and 17089(b), be reported on the SARC.¹⁸ “Good repair” for the purpose of SARC has the same

¹³ Education Code section 35292.5 was pled in *Clean School Restrooms*, 04-TC-01 and was withdrawn by the claimant on March 25, 2010.

¹⁴ Education Code section 17002 was pled in *Williams Case Implementation I, II, III*, 05-TC-04; 07-TC-06; 08-TC-01 and was denied by the Commission on the ground that the requirement to maintain schools in good repair is not new, but is a longstanding requirement of statutory and common law, and the statute’s definition of “good repair” is only clarifying the existing law. In addition, all the activities claimed in relation to school facilities programs utilizing the section 17002 good repair definition were voluntarily assumed activities.

¹⁵ Education Code section 17002(d)(1).

¹⁶ Education Code section 17002(d)(1)(M).

¹⁷ Exhibit G, Office of Public School Construction (OPSC), Facility Inspection Tool (FIT) https://www.documents.dgs.ca.gov/opsc/Forms/Worksheets/FIT_rev.pdf (accessed on January 30, 2018).

¹⁸ Education Code section 33126(b)(8). Education Code section 33126(b) (as amended by Stats. 2004, ch. 900 § 10 (SB 550)) was pled in *Williams Case Implementation I, II, III*, 05-TC-04; 07-

meaning as specified in Section 17002(d).¹⁹ The SARC's must be prepared annually and disseminated to the public.²⁰

Local Control Accountability Plan (LCAP): As a part of the new Local Control Funding Formula (LCFF),²¹ Education Code section 52060 incorporated the requirement to maintain schools in “good repair” as defined in Education Code section 17002(d)(1) into one of the eight state priorities, the “Priority 1/Basic Services,”²² and requires, to the extent practicable, that the data in the LCAP be reported in a manner consistent with how information is reported on the SARC.²³

Use of Facilities Consistent with Gender Identity: Education Code section 221.5 requires that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and to use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.

B. The Test Claim Statute

Statutes 2017, Chapter 687, added section 35292.6 as follows:

- (a) A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets the 40- percent pupil poverty threshold required to operate a schoolwide program pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.
- (b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products.
- (c) For purposes of this section, "feminine hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

TC-06; 08-TC-01 and was partially approved by the Commission, including the activity to report any needed maintenance to ensure good repair on the SARC.

¹⁹ Education Code section 17014(d).

²⁰ Education Code section 33126.

²¹ Education Code section 42238.02. The formula establishes grade span adjusted base grant funding for average daily attendance for school districts with supplemental and concentration grant add-ons for each school district’s percentage of unduplicated count for English Learners (EL), free and reduced-price meal eligible students and foster youth students.

²² Education Code section 52060(a)-(d). The governing boards of school districts are required to adopt a three-year LCAPs, using a template adopted by the state board, describing annual goals for all pupils and each subgroup, including the low-income subgroup, and specific actions the districts will take each year to achieve the goals identified in the LCAP for each of the state priorities

²³ Education Code section 52060(f).

The schools required to comply with this statute in accordance with subdivision (a) are analyzed in the Discussion below.

The Senate Floor analysis, quoting the author of the bill, states:

This bill seeks to increase access to menstrual products to girls and young women who need it most by providing them for free in public schools grade 6 to grade 12 that receive Title 1 funding.²⁴

The test claim statute is needed, according to the analysis, to remove a barrier to girls' education by providing access to feminine hygiene products, and may result, as evidenced by other jurisdictions, in increased school attendance:

Not having access to these vital medical necessities creates an additional barrier to a young girl's education. Young girls sometimes miss school because of a lack of access to these products. A pilot project to provide menstrual products for free in New York City was done last year in 25 middle schools and high schools and the schools saw a 2.4% increase in attendance. Providing tampons and pads is about equity and social justice. We provide toilet paper in the bathrooms of schools and tampons should be no different.²⁵

The analysis further notes that access to female hygiene products is vital for health, well-being, and full participation, but is limited for vulnerable populations stating:

According to a June 20, 2016 committee report by Committee on Women's Issues for the Council of the City of New York, ". . . Feminine hygiene products are vital for the health, well-being and full participation of women and girls. Inadequate menstrual hygiene management is associated with both health and psycho-social issues, particularly among low-income women. It has been reported that a lack of access to feminine hygiene products can cause emotional duress, physical infection and disease, and can lead to cervical cancer. Access to feminine hygiene products has proven to be limited for vulnerable populations. Currently the cost of feminine hygiene products (FHP) are not included in health insurance or flexible spending accounts, nor in public benefits programs such as the Supplemental Nutrition Assistance Program (SNAP) or Women, Infants, and Children (WIC) benefits."²⁶

The Assembly Floor Analysis, concurring in Senate amendments, and quoting the Senate Appropriations Committee analysis, indicates that the bill is expected to result in reimbursable state-mandated costs as follows:

²⁴ Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, page 3.

²⁵ Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 2.

²⁶ Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 3.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) *One-time state reimbursable mandated costs*, ranging from the millions to tens of millions of dollars in Proposition 98 General Fund, for the bill's requirement for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars.
- 2) *Ongoing state reimbursable mandated costs*, likely in the hundreds of thousands of dollars in Proposition 98 General Fund, to stock the dispensers at no charge.²⁷

III. Positions of the Parties

A. Desert Sands Unified School District

The claimant alleges that the test claim statute constitutes a reimbursable state-mandated program²⁸ and requires the claimant to perform the following new activities to implement the test claim statute:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products.
- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms.
- (iii) Purchasing and installing dispensers in the schools' restrooms.
- (iv) Stocking the schools' restrooms with feminine hygiene products at all times.²⁹

The total increased costs alleged by the claimant to perform these activities for the 2017-2018 fiscal year amounted to \$61,615.72 for the cost of labor and supplies, including \$39,629.38 for stocking the schools' restrooms with feminine hygiene products at all times.³⁰ The total estimated costs alleged for the 2018-2019 fiscal year, based on the 2017-2018 costs, amounted to \$43,988.22, including the \$39,629.38 for stocking the restrooms with feminine hygiene

²⁷ Exhibit G, Assembly Concurrence in Senate Amendments Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 1, emphasis added.

²⁸ Exhibit A, Test Claim, page 7 (Narrative).

²⁹ Exhibit A, Test Claim, page 11 (Narrative).

³⁰ Exhibit A, Test Claim, pages 11-13 (Narrative).

products.³¹ To support its claim, the claimant filed a declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District³² and invoices.³³

The claimant filed rebuttal comments on February 15, 2019 in response to Finance’s argument “questioning the validity of the claimant’s ongoing labor costs claimed in the Test Claim and that the new activities implemented by the Test Claim, as it relates to labor costs, may be “absorbed into existing activities of the school district therefore not resulting in increased labor costs to that district.”³⁴ The claimant disagrees with Finance’s statement that the Test Claim asserts “a massive overhaul of school policies and procedures” and states that the claimed “labor costs are very reasonable based on the time estimated to perform the tasks.”³⁵

On March 26, 2019, the claimant filed comments on the Draft Proposed Decision disagreeing with the recommendation that the proposed activities to update policies and procedures and to purchase and install dispensers are not mandated by the plain language of the test claim statute.³⁶ The claimant argues that “[l]egislative history acknowledges that the mandate would result in school districts incurring costs to purchase and install dispensers and the claimant has filed evidence supporting that cost.”³⁷

B. Department of Finance

Finance argues that “[e]xisting law (Education Code section 35292.5) requires all schools, with few exceptions, to maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap, and paper towels or functional hand dryers”, and, therefore, the activities related to implementation of the test claim statute may “simply be absorbed into existing activities of a school district, therefore not resulting in increased labor costs to that district.”³⁸

Alternatively, Finance argues that, to the extent that the test claim statute establishes new responsibilities, the requirement to stock feminine hygiene products in 50 percent of certain public school’s restrooms, already maintained as required by section 35292.5 and 17002, “should not require massive overhaul of school policies and procedures, nor should it result in significant increased labor costs.”³⁹

³¹ Exhibit A, Test Claim, pages 13-15 (Narrative).

³² Exhibit A, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

³³ Exhibit A, Test Claim, pages 25-33.

³⁴ Exhibit C, Claimant’s Rebuttal Comments, page 1.

³⁵ Exhibit C, Claimant’s Rebuttal Comments, pages 1-2.

³⁶ Exhibit E, Claimant’s Comments on the Draft Proposed Decision.

³⁷ Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 2.

³⁸ Exhibit B, Finance’s Comments on the Test Claim, page 1.

³⁹ Exhibit B, Finance’s Comments on the Test Claim, page 2.

On March 26, 2019, Finance filed comments on the Draft Proposed Decision expressing concerns “regarding some of the costs in the Draft Proposed Decision.”⁴⁰ Finance argues that “certain costs, such as development and implementation of policies, and purchase and installation of dispensers, are one-time costs which should not need to be repeated in ongoing years.”⁴¹ And, Finance continues to dispute the significant labor cost alleged to refill dispensers, given that the claimant “has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school.”⁴²

IV. Discussion

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

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

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁴³ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁴⁴

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁴⁵
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁴⁶

⁴⁰ Exhibit F, Finance’s Comments on the Draft Proposed Decision, page 1.

⁴¹ Exhibit F, Finance’s Comments on the Draft Proposed Decision, page 1.

⁴² Exhibit F, Finance’s Comments on the Draft Proposed Decision, page 1.

⁴³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁴⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁴⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

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

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁴⁷
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁴⁸

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.⁴⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁵⁰ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵¹

A. This Test Claim Was Timely Filed.

Government Code section 17551(c) provides that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”⁵² Section 1183.1(c) of the Commission’s regulations, in turn, defines “12 months” as 365 days.⁵³

The test claim statute became effective on January 1, 2018, and the Test Claim was filed on December 7, 2018, within 365 days following the effective date of the statute.⁵⁴ The Test Claim was therefore timely pursuant to the first prong of Government Code section 17551(c) and California Code of Regulations, title 2, section 1183.1(c).⁵⁵

⁴⁷ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

⁴⁸ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁴⁹ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁵⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁵¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

⁵² Government Code section 17551(c) (Stats. 2007, ch. 329).

⁵³ California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

⁵⁴ Exhibit A, Test Claim, page 1.

⁵⁵ Based on the filing date of December 7, 2018, the potential period of reimbursement would begin July 1, 2017. (Gov. Code, § 17557(e).) However, since the test claim statute did not

B. Education Code Section 35292.6, as Added by Statutes 2017, Chapter 687, Imposes a Reimbursable State-Mandated Program on School Districts with Specified Schools Within the Meaning of Article XIII B, Section 6 of the California Constitution.

As described below, the Commission finds that Education Code section 35292.6, added by the test claim statute (Stats. 2017, ch. 687) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

1. Education Code Section 35292.6 Imposes a State-Mandated Program on School Districts with Schools Maintaining Any Combination of Classes from Grade 6 to Grade 12, Inclusive, That Meet a 40 Percent Pupil Poverty Threshold Required to Operate a Schoolwide Title I Program Pursuant to Federal Law, to Stock 50 Percent of Such Schools' Restrooms with Feminine Hygiene Products at All Times at No Cost to Pupils.

The plain language of Education Code section 35292.6 requires specified schools maintaining any combination of classes from grade 6 to grade 12, to stock at all times at least 50 percent of the schools' restrooms with feminine hygiene products, defined as "tampons and sanitary napkins for use in connection with the menstrual cycle." In addition, the statute prohibits these schools from charging for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products. Section 35292.6 states the following:

- (a) A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets the 40- percent pupil poverty threshold required to operate a schoolwide program pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code *shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.*
- (b) A public school described in subdivision (a) *shall not charge for any menstrual products provided to pupils*, including, but not limited to, feminine hygiene products.
- (c) For purposes of this section, "feminine hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

Based on the plain language of the statute, the activity to stock 50 percent of the school's restrooms with "feminine hygiene products" (defined as tampons and sanitary napkins) at all times, is mandated by the state.⁵⁶ Although the statute suggests that a school can stock more than 50 percent of the restrooms with feminine hygiene products (with the language requiring schools to stock "at least 50 percent of the school's restrooms"), there is no mandate to do so. It is within the discretion of a school district or the school site to stock more than 50 percent of the school's restrooms with feminine hygiene products.

In addition, the test claim statute prohibits schools from charging for any "menstrual products provided to pupils, including, but not limited to, feminine hygiene products." The term

become effective and operative until January 1, 2018, then the period of reimbursement begins January 1, 2018.

⁵⁶ Education Code section 75 states that "[s]hall is mandatory and 'may' is permissive."

“menstrual products” is not defined. However, the phrase “menstrual products” is broader than “feminine hygiene products” (defined as tampons and sanitary napkins), since the plain language states that “menstrual products” includes, “but is not limited to,” “feminine hygiene products.” The test claim statute only mandates that schools stock tampons and sanitary napkins. The state has not mandated schools to provide or stock any other menstrual product. Therefore, to the extent a school stocks other menstrual products, it does so at its own discretion and cost.

Moreover, the test claim statute mandates that 50 percent of the school’s restrooms be stocked with feminine hygiene products, but does not define the term “restrooms.” A “restroom” is commonly understood as “*a room or suite of rooms in a public space provided with lavatory, toilet, and other facilities . . .*”⁵⁷ 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, 50 percent of the rooms provided for that purpose at a school site. Thus, for example, 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.

Finally, the test claim statute provides that only “a public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that 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” is mandated to comply with the test claim statute. Section 6314 of Title 20 of the United States Code is part of federal statutory scheme known as Title I, Part A, authorized under the Elementary and Secondary Education Act (ESEA) of 1965⁵⁸ and most recently reauthorized by the Every Student Succeeds Act (ESSA) of 2015,⁵⁹ to provide federal financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging state academic standards.⁶⁰ Any state desiring federal funds from Title I, Part A, is required to submit to the federal government a state plan that outlines the state’s challenging academic standards and student academic achievement standards; establishes a single, statewide accountability system that will be effective in ensuring that all LEAs and schools make adequate yearly progress to meet the state’s student academic achievement standards; and establishes statewide annual measurable objectives.⁶¹ The Act also requires each state to produce an annual

⁵⁷ Webster’s Third New International Dictionary, Merriam-Webster, Inc. Massachusetts 1993, page 1937.

⁵⁸ Public Law No. 89-10, Title I, Part A has been codified in Title 20 United State Code, Sections 6301-6339, 6571-6578.

⁵⁹ Public Law No. 114-95, 129 Statutes 1802 (2015).

⁶⁰ Exhibit G, U.S. Department of Education, Programs, Improving Basic Programs Operated by Local Educational Agencies (Title I, Part A) <https://www2.ed.gov/programs/titleiparta/index.html> (accessed on January 30, 2018).

⁶¹ 20 United States Code, section 6311.

report card that summarizes student achievement data statewide, disaggregated by student subgroups, including low-income student subgroups.⁶²

Local educational agencies (LEAs) allocate funds received under the federal Title I, Part A program to schools in “eligible school attendance areas” in rank order on the basis of the total number of children from low-income families in each area or school, using certain measures of poverty.⁶³ Section 6314(a)(1)(A) of Title 20 of the United States Code, which is referenced in the test claim statute, authorizes the LEA to consolidate and use federal Title I, Part A funds, together with other federal, state, and local funds, to upgrade the entire educational program of a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from such families. Federal regulations clarify that a school is eligible to operate a schoolwide program pursuant to section 6314(a)(1)(A) if it meets two requirements—(i) it is eligible to receive Title I, Part A funds, and (ii) has at least 40 percent level of poverty, ascertained with one of the two poverty tests, identified in subsections (A) and (B), as follows:

- (i) The school’s LEA determines the school serves an eligible attendance area or is a participating school under section 1113 of the ESEA; *and*
- (ii) For the initial year of the schoolwide program -
 - (A) The school serves a school attendance area in which not less than 40 percent of the children are from low-income families, *or*
 - (B) Not less than 40 percent of the children enrolled in the school are from low-income families.⁶⁴

The test claim statute, however, states that it applies to a school that meets the “40 percent *pupil* poverty threshold” required to operate a schoolwide program. The phrase “40 percent *pupil* poverty threshold” is not defined in the test claim statute, and is not a phrase used in federal law. Section 6314(a)(1)(A) of Title 20 of the United States Code instead uses the phrase “*children from low-income families*” and sets out two poverty tests to see if a school that qualifies for Title I, Part A funding also meets the 40 percent threshold required to operate a schoolwide program. The first test, described in subsection (A) of the federal regulation discussed above, is that “the school serves a *school attendance area* in which not less than 40 percent of the children are from low-income families.”⁶⁵ This test looks at the “school attendance area,” which is the geographical area in which the children who are normally served by that school reside.⁶⁶ Thus,

⁶² 20 United State Code, section 6311.

⁶³ 20 United States Code, section 6313(c). The measures of poverty are identified in 20 United States Code, section 6313(a)(5). For an LEA with an enrollment of less than 1,000 students, the ranking and serving requirements based on poverty percentages are not applicable. 20 United States Code, section 6313(a)(5).

⁶⁴ 34 Code of Federal Regulations section 200.25(b)(1).

⁶⁵ 20 United States Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(A), emphasis added.

⁶⁶ 20 United States Code, section 6313(a)(2)(A).

this test looks at the income level of the families that reside in the area served by the school, regardless of whether the children from these families are actually enrolled in the school. The second test, described in subsection (B) of federal regulation discussed above, is a narrower approach, and looks at the income level of the families whose children are actually enrolled in the school. This test states that schools where “not less than 40 percent of the *children enrolled* in the school are from low-income families,” are eligible to operate a schoolwide program.⁶⁷

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

The Legislature is deemed to be aware of existing laws in effect at the time legislation is enacted⁶⁸ and, thus, it presumably was aware of the two poverty tests allowed by section 6314(a)(1)(A) of Title 20 of the United States Code when it enacted the test claim statute. The Legislature did not use the phrase “40 percent poverty threshold,” which would suggest that a school meeting either test identified in section 6314(a)(1)(A) (based on the income levels of the families in the school attendance area, or on the income level of the families whose children are actually enrolled in the school) is required to comply with the test claim statute.

Instead, the Legislature expressly used the word “pupil” in the phrase “40 percent *pupil* poverty threshold.” Under the rules of statutory construction, “the statutes should be construed to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous.”⁶⁹ Webster’s Third New International Dictionary defines “pupil” as “a child or young person in school or in the charge of a tutor or instructor: STUDENT”⁷⁰ Thus, the word “pupil” refers only to children enrolled in school.

Therefore, the Commission finds that the Legislature intended that a public school maintaining any combination of classes from grade 6 to grade 12, inclusive, is mandated by the state to stock 50 percent of the school’s restrooms with feminine hygiene products at all times at no cost to pupils, if the school is eligible to receive Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families.

This interpretation is consistent with the legislative history of the test claim statute, which focuses on the education of girls enrolled in school. According to the Assembly floor analysis, “this bill . . . [r]equires public schools *enrolling pupils* in grades six through twelve, inclusive,

⁶⁷ 20 United State Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(B), emphasis added.

⁶⁸ *People v. Licas* (2007) 41 Cal.4th 362, 367, citation omitted.

⁶⁹ *Klein v. United States of America* (2010) 50 Cal.4th 68, 80, citation omitted.

⁷⁰ Webster’s Third New International Dictionary, Merriam-Webster, Inc. Massachusetts 1993, page 1844. The courts use the dictionary as a proper source to determine the usual and ordinary meaning of a word or phrase in a statute. “If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103, citation omitted).

that qualify to operate a schoolwide Title I program based upon a 40% pupil poverty threshold, to stock at least 50% of the school's restrooms with feminine hygiene products at all times."⁷¹ The Senate floor analysis states that "[n]ot having access to these vital medical necessities creates an additional barrier to a young girl's education. Young girls sometimes miss school because of a lack of access to these products," and that as a result of a pilot project in New York City to provide menstrual products for free in schools "the schools saw a 2.4% increase in attendance."⁷² Thus, "[t]his bill seeks to increase access to menstrual products to girls and young women who need it most by providing them for free in public schools grade 6 to grade 12 that receive Title 1 funding."⁷³ The Senate floor analysis also states that the costs are expected ". . . for the bill's requirement for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products."⁷⁴

Accordingly, the test claim statute imposes a state-mandated program on school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive, *and* (2) meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families, for such schools to:

- Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

In addition, the claimant requests reimbursement for the costs of training, updating policies and procedures, and for purchasing and installing dispensers in the schools' restrooms.⁷⁵ Although the legislative history of the test claim statute acknowledged that the mandate would result in school districts incurring costs to purchase and install dispensers and the claimant has filed evidence supporting that cost,⁷⁶ these activities and costs are not mandated by the plain language of the test claim statute. Nevertheless, these activities and costs may be proposed for inclusion in the Parameters and Guidelines if they are supported by evidence in the record showing they are "reasonably necessary for the performance of the state-mandated program" in accordance with

⁷¹ Exhibit G, Assembly Third Reading Analysis of AB 10 (2017-2018), as amended May 30, 2017, page 1, emphasis added.

⁷² Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, page 2.

⁷³ Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, page 3.

⁷⁴ Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, page 1.

⁷⁵ Exhibit A, Test Claim, page 11 (Narrative, page 5).

⁷⁶ Exhibit G, Assembly Concurrence in Senate Amendments Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 1; Exhibit A, Test Claim, pages 21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018) and 26 (Invoice).

Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

2. Education Code Section 35292.6 Imposes a New Program or Higher Level of Service.

For the test claim statute to be subject to subvention pursuant to article XIII B, section 6 of the California Constitution, the statute must impose a new program or higher level of service. First, the mandated activity must be new when compared with the legal requirements in effect immediately before the enactment of the test claim statute.⁷⁷ In addition, the program must carry out of the governmental function of providing services to the public, or, be a law which, to implement a state policy, imposes unique requirements on local government that does not apply generally to all residents and entities in the state:

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.” But the term “program” itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – *programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.*⁷⁸

The Court further held that “the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.”⁷⁹

Finance argues that the implementation of the test claim statute may “simply be absorbed into existing activities of a school district, therefore not resulting in increased labor costs to that district,” because “[e]xisting law (Education Code section 35292.5) requires all schools, with few exceptions, to maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.”⁸⁰

The Commission, however, finds that the activity to stock 50 percent of the school's restrooms with feminine hygiene products (defined as tampons and sanitary napkins) at all times is new. As discussed in the Background, prior state law requires schools to have restrooms open during school hours, and kept in good repair and stocked at all times with toilet paper, soap, and paper

⁷⁷ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

⁷⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis added.

⁷⁹ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57, emphasis added.

⁸⁰ Exhibit B, Finance’s Comments on the Test Claim, page 1.

towels or functional hand dryers.⁸¹ In addition, prior law requires that school restroom facilities be evaluated as to whether they meet the “good repair” standard in accordance with the Facility Inspection Tool (FIT) created by the Office of Public School Construction (OPSC) or a local evaluation instrument that meets the same criteria,⁸² with the findings to be annually reported on the SARCs,⁸³ and addressed in the LEAs’ LCAPs.⁸⁴ Schools are also required by the prior law to permit students use facilities consistent with their gender identity, irrespective of the gender listed on the pupil’s records.⁸⁵ No prior law, however, required schools to stock restrooms with feminine hygiene products. Thus, the requirement “to stock at least 50 percent of the school’s restrooms with feminine hygiene products at all times” at no cost to pupils, is new. Although some schools may have been stocking school restrooms with feminine hygiene products prior to the test claim statute, they were not mandated by the state to do so until after the operative date of the mandate. Government Code section 17565 states that “[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

In addition, the activity mandated by the test claim statute is unique to government and applies only to *public* schools. Moreover, it provides a peculiarly governmental service to the public. The test claim statute “seeks to increase access to menstrual products to girls and young women who need it most by providing them for free in public schools” as not having access to these products “creates an additional barrier to a young girl’s education.”⁸⁶ Providing access to education is a core governmental function and mandatory and free public education is required by the California Constitution.⁸⁷

Accordingly, the test claim statute imposes a new program or higher level of service.

3. Education Code Section 35292.6 Results in Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

The mandated activity must also result in increased costs mandated by the state. Finance argues that the requirement to stock feminine hygiene products in 50 percent of the school restrooms, which are already maintained as required by Education Code sections 35292.5 and 17002,

⁸¹ Education Code section 17002; Education Code section 35292.5.

⁸² Education Code section 17002(d)(1).

⁸³ Education Code section 33126

⁸⁴ Education Code section 52060(a)-(d).

⁸⁵ Education Code section 221.5.

⁸⁶ Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, pages 2-3.

⁸⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

“should not require massive overhaul of school policies and procedures, nor should it result in significant increased labor costs.”⁸⁸

Article XIII B, section 6 of the California Constitution and Government Code section 17561(a) require reimbursement for all costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment be made unless the claim exceeds \$1,000. In addition, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

Here, the claimant alleges that it has incurred 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.⁸⁹ The claimant supports these assertions with invoices⁹⁰ and a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District.⁹¹ The claimant identifies the following actual costs incurred in fiscal year 2017-2018 to stock middle and high schools’ restrooms with feminine hygiene products:

- \$374.16 to develop and implement policies and procedures.⁹²
- \$2,110.51 to train certificated and classified staff.⁹³
- \$19,501.67 to purchase and install dispensers.⁹⁴
- \$6,186.14 in purchase price for feminine hygiene products—pads and tampons.⁹⁵

⁸⁸ Exhibit B, Finance’s Comments on the Test Claim, page 2.

⁸⁹ Exhibit A, Test Claim, pages 11-13 (Narrative).

⁹⁰ Exhibit A, Test Claim, pages 25-33.

⁹¹ Exhibit A, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

⁹² Exhibit A, Test Claim, pages 11 (Narrative) and 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

⁹³ Exhibit A, Test Claim, pages 11-12 (Narrative) and 21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

⁹⁴ Exhibit A, Test Claim, pages 12 (Narrative), 21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018), and 26 (Invoice).

⁹⁵ Exhibit A, Test Claim, pages 12 (Narrative), 21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018), and 27-33 (Invoices).

- \$32,387.04 in labor costs for school custodians to refill dispensers (based on \$27.54 hourly rate X 0.13 minutes per day X 180 instructional days).⁹⁶
- \$1,056.20 in labor costs to order and maintain stock for feminine hygiene products (based on \$35.21 hourly rate X 30 hours).⁹⁷

The total estimated costs alleged for the 2018-2019 fiscal year, based on the 2017-2018 costs, amounted to \$43,988.22, including the \$39,629.38 for stocking the restrooms with feminine hygiene products.⁹⁸ The claimant also asserts that the statewide cost to implement the alleged mandate is estimated at \$5,000,000.⁹⁹

The claimant has not identified the number of schools in its district required to comply with the mandate or the number of restrooms in each school and Finance, in comments on the Draft Proposed Decision argues that the costs alleged are not sufficiently supported and that some of them (including the installation of dispensers) should be one time only.¹⁰⁰ However, based on the information contained on the claimant's website,¹⁰¹ and in the publicly available SARC reports for the middle and high schools operated by the claimant, the Commission takes notice that the claimant has a number of Title I schools, serving grade 6 to grade 8 for middle schools, and grade 9 to grade 12 for high schools, that receive Title I funds and meet the 40 percent pupil poverty threshold under Section 6314(a)(1)(A) of Title 20 of the United States Code to operate Title I, Part A schoolwide programs, which are, therefore, required to perform the activity mandated by the test claim statute.¹⁰² Thus, the record contains sufficient evidence that the claimant's cost to comply with the mandate in fiscal year 2017-2018 exceeded \$1,000. Whether reasonably necessary activities that have not yet been approved, since they are not required by the plain language of the statute and must be proposed for consideration in the Parameters and Guidelines, should be on-going or one-time costs is an issue for the Parameters and Guidelines.

Additionally, no law or facts in the record support a finding that the exceptions specified in Government Code section 17556 apply to this claim. There is, for example, no law or evidence

⁹⁶ Exhibit A, Test Claim, pages 13 (Narrative) and 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

⁹⁷ Exhibit A, Test Claim, pages 13 (Narrative) and 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

⁹⁸ Exhibit A, Test Claim, pages 13-15 (Narrative).

⁹⁹ Exhibit A, Test Claim, page 15 (Narrative).

¹⁰⁰ Exhibit F, Finance's Comments on the Draft Proposed Decision, page 1.

¹⁰¹ Exhibit G, Desert Sands Unified School District, State and Federal Programs, <https://www.dsusd.us/SFP> (accessed on February 4, 2019), page 1 (stating that Title I funds support district's programs for five (5) middle schools, and two (2) high schools).

¹⁰² Exhibit G, Indio High School 2016-17 School Accountability Report Card (SARC), published January 2018 (stating that in 2016-17, Indio High School, serving grades 9 through 12, qualified for Schoolwide Title I funding, and at the beginning of the 2016-17 the school year, the school enrolled 2024 students, including 90.8% socioeconomically disadvantaged —students qualifying for free and reduced price lunch).

in the record that additional funds have been made available for the new state-mandated activity.¹⁰³ In addition, school districts have no fee authority to pay the costs of the alleged mandate since the statute expressly prohibits schools from charging pupils for feminine hygiene products.¹⁰⁴

Based on the foregoing, the Commission finds that the test claim statute results in increased actual costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

V. Conclusion

Accordingly, the Commission approves this Test Claim and finds that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018 on school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) meet the 40 percent pupil poverty threshold required to operate a schoolwide program pursuant to section 6314(a)(1)(A) of Title 20 of the United States Code, in that the school is eligible for Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families, for such schools to:

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

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed for inclusion in the Parameters and Guidelines pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

¹⁰³ Government Code section 17556(e).

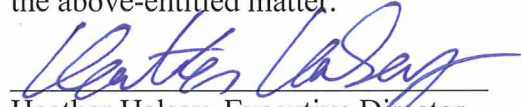
¹⁰⁴ Government Code section 17556(d).



RE: **Decision**

Public School Restrooms: Feminine Hygiene Products, 18-TC-01
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)
Desert Sands Unified School District, Claimant

On May 24, 2019, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: May 24, 2019

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On May 24, 2019, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued May 24, 2019**
- **Decision adopted May 24, 2019**

Public School Restrooms: Feminine Hygiene Products, 18-TC-01
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)
Desert Sands Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 24, 2019 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/24/19

Claim Number: 18-TC-01

Matter: Public School Restrooms: Feminine Hygiene Products

Claimant: Desert Sands Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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Start typing any word or phrase



Haunting Hooks is back, with guest judge R.L. Stine! Enter

now



Top Definitions

Quiz

Examples

sanitary napkin



See synonyms for *sanitary napkin* on Thesaurus.com

noun

1. a pad of absorbent material, as cotton, worn by women during menstruation to absorb the uterine flow.



NOW PLAYING

Arvo: Word of the Day

Scary News: R.L. Sti...

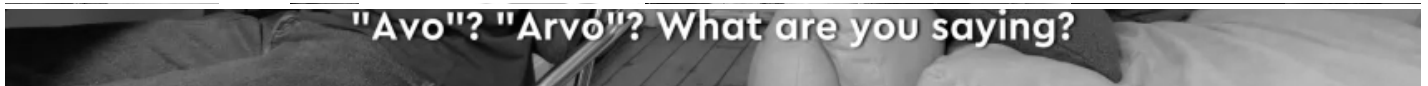
What Scares A...

Chiaroscuro: Word o...

Mispronounce Thes...

How To Woo A Word...

Is The Word "R



GENERAL INFORMATION

The Facility Inspection Tool (FIT) has been developed by the Office of Public School Construction to determine if a school facility is in “good repair” as defined by Education Code (EC) Section 17002(d)(1) and to rate the facility pursuant to EC Section 17002(d)(2). The tool is designed to identify areas of a school site that are in need of repair based upon a visual inspection of the site. In addition, the EC specifies the tool should not be used to require capital enhancements beyond the standards to which the facility was designed and constructed.

Good repair is defined to mean that the facility is maintained in a manner that ensures that it is clean, safe, and functional. As part of the school accountability report card, school districts and county offices of education are required to make specified assessments of school conditions including the safety, cleanliness, and adequacy of school facilities and needed maintenance to ensure good repair. In addition, beginning with the 2005/2006 fiscal year, school districts and county offices of education must certify that a facility inspection system has been established to ensure that each of its facilities is maintained in good repair in order to participate in the School Facility Program and the Deferred Maintenance Program. This tool is intended to assist school districts and county offices of education in that determination.

County superintendents are required to annually visit the schools in the county of his or her office as determined by EC Section 1240. Further, EC Section 1240(c)(2)(l), states the priority objective of the visits made shall be to determine the status of the condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy, or as defined by EC Section 17592.72(c) and the accuracy of data reported on the school accountability report card with the respect to the safety, cleanliness, and adequacy of school facilities, including good repair as required by EC Sections 17014, 17032.5, 17070.75, and 17089. This tool is also intended to assist county offices of education in performing these functions.

The EC also allows individual entities to adopt a local evaluation instrument to be used in lieu of the FIT provided the local instrument meets the criteria specified in EC Section 17002(d) and as implemented in the FIT. Any evaluation instrument adopted by the local educational agency for purpose of determining whether a school facility is maintained in good repair may include any number of additional items but must minimally include the criteria and rating scheme contained in the FIT.

USER INSTRUCTIONS

The FIT is comprised of three parts as follows:

Part I, Good Repair Standard outlines the school facility systems and components, as specified in EC Section 17002(d)(1), that should be considered in the inspection of a school facility to ensure it is maintained in a manner that assures it is clean, safe and functional. Each of the 15 sections in the Good Repair Standard provides a description of a minimum standard of good repair for various school facility categories. Each section also provides examples of clean, safe and functional conditions. The list of examples is not exhaustive. If an evaluator notes a condition that is not mentioned in the examples but constitutes a deficiency, the evaluator can note such deficiency in the applicable category as “other.”

Some of the conditions cited in the Good Repair Standard represent items that are critical to the health and safety of pupils and staff. Any deficiencies in these items require immediate attention and, if left unmitigated, could cause severe and immediate injury, illness or death of the occupants. They constitute extreme deficiencies and indicate that the particular building system evaluated failed to meet the standard of good repair at that school site. These critical conditions are identified with underlined text followed by an (X) on the Good Repair Standard. If the underlined statement is not true, then there is an extreme deficiency (to be marked as an “X” on the Evaluation Detail) resulting in a “poor” rating for the applicable category. It is important to note that the list of extreme deficiencies noted in the Good Repair Standard is not exhaustive. Any other deficiency not included in the criteria but meeting the definition above can be noted by the evaluator and generate a poor rating.

Part II, Evaluation Detail is a site inspection template to be used to evaluate the areas of a school on a category by category basis. The design of the inspection template allows for the determination of the scope of conditions across campus. In evaluating each area or space, the user should review each of the 15 categories identified in the Good Repair Standard and make a determination of whether a particular area is in good repair. Once the determination is made, it should be recorded on the Evaluation Detail, as follows:

OK	No Deficiency - Good Repair: Mark "OK" if all statements in the Good Repair Standard are true, and there is no indication of a deficiency in the specific category.
D	Deficiency: Mark “D” if one or more statement(s) in the Good Repair Standard for the specific category is not true, or if there is other clear evidence of the need for repair.
X	Extreme Deficiency: Indicate “X” if the area has a deficiency that is considered an “Extreme Deficiency” in the Good Repair Standard or there is a condition that qualifies as an extreme deficiency but is not noted in the Good Repair Standard.
NA	Not Applicable: If the Good Repair Standard category (building system or component) does not exist in the area evaluated, mark “NA”.

Below are suggested methods for evaluating various systems and areas:

- **Gas and Sewer** are major building systems that may span the entire school campus but may not be evident as applicable building systems in each classroom or common areas. However, because a deficiency in either of these systems could become evident and present a health and safety threat anywhere on campus, the user should not mark "NA" and should instead include an evaluation of these systems in each building space.
- **Roofs** can be easily evaluated for stand alone areas, such as portable classrooms. For permanent buildings containing several areas to be evaluated, roofs should be considered as parts of individual areas in order to accurately account for a scope of any roofing deficiency. For example, a 10 classroom building contains damaged gutters on one side of the building, spanning across five classrooms. Therefore, an evaluator should mark five classrooms as deficient in the roof category and the other five classrooms as in good repair, assuming there are no other visible deficiencies related to roofing.
- **Overall Cleanliness** is intended to be used to evaluate the cleanliness of each space. For example, a user should note a deficiency due to dirty surfaces in Overall Cleanliness, rather than **Interior Surfaces**. At the same time, the user should note such deficiency only in Overall Cleanliness in order to avoid accounting for such deficiency twice, i.e. in two sections.
- The tool is designed to evaluate stand-alone restrooms as separate areas. However, restrooms contained within other spaces, such as a kindergarten classroom or a library, can be evaluated as part of that area under Restrooms. If the area evaluated does not contain a restroom, Restrooms should be marked "NA."
- **Drinking fountains** can exist within individual classrooms or areas, right outside of classrooms or restrooms or other areas, or as stand alone fixtures on playgrounds and sports fields. If a drinking fountain or a set of fountains is located inside a building or immediately outside the area being evaluated, it should be included in the evaluation of that area under Drinking Fountains. If a fountain is located on the school grounds, it should be evaluated as part of that outside space. If there is no drinking fountain in the area evaluated, Drinking Fountains should be marked "NA."
- **Playgrounds/School Grounds**, should be evaluated as separate areas by dividing a campus into sections with defined borders. In this case, several sections of the good repair criteria would not apply to the evaluation, as they do not exist outside of physical building areas, such as **Structural Damage** and **Fire Safety**, for example.

Part III includes the **Category Totals and Ranking**, the **Overall Rating**, and a section for **Comments and Rating Explanation**.

Once the inspector completes the site inspection, he or she must total the number of areas evaluated. The inspector must also count all of the spaces deemed in good repair, deficient, extremely deficient, or not applicable under each of the 15 sections. Next, the evaluator must determine the condition of each section by taking the ratio of the number of areas deemed in good repair to the number of areas being evaluated (after subtracting non-applicable spaces from the total number of areas evaluated). If any of the 15 sections received a rating of extreme deficiency, the ratio (i.e., the percentage of good repair) for that section and the category the section is in should default to zero. The total percent per category (A through H) is determined by the total of all percentages of systems in good repair divided by the number of sections in that category. For example, to determine the total percent for the Structural category, add the percentages for the Structural Damage and Roof sections and divide the result by two.

Next, the overall school site score is determined by computing the average percentage rating of the eight categories (i.e., the total of all percentages divided by eight). Finally, the rater should determine the overall School Rating by applying the Percentage Range in the table provided in Part III to the average percentage calculated and taking into consideration the Rating Description provided in the same table.

*Although the FIT is designed to evaluate each school site within a reasonable range of facility conditions, it is possible that an evaluator may identify critical facility conditions that result in an Overall School Rating that does not reflect the urgency and severity of those deficiencies and/or does not match the rating's Description in Part III. In such instances, the evaluator may reduce the resulting school score by one or more grade categories and describe the reasons for the reduction in the space provided for Comments and Rating Explanation.

When completing Part III of the FIT, the inspector should note the date and time of the inspection as well as weather conditions and any other pertinent inspection information in the specific areas provided and utilize the Comments and Rating Explanation Section if needed.

When completing Part III of the FIT, the school district should be provided the opportunity to provide comments and utilize the Comments and Rating Explanation Section if needed.

PART I: GOOD REPAIR STANDARD

(X): If underlined statement is not true, then this is an extreme deficiency (marked as an "X") on the Evaluation Detail resulting in a "poor" rating for the applicable category.

Gas Leaks

Gas systems and pipes appear safe, functional, and free of leaks.

Examples include but are not limited to the following:

- a. There is no odor that would indicate a gas leak. (X)
- b. Gas pipes are not broken and appear to be in good working order. (X)
- c. Other

Mechanical Systems

Heating, ventilation, and air conditioning systems (HVAC) as applicable are functional and unobstructed. Examples include but are not limited to the following:

- a. The HVAC system is operable. (X)
- b. The facilities are ventilated (via mechanical or natural ventilation).
- c. The ventilation units are unobstructed and vents and grills are without evidence of excessive dirt or dust.
- d. There appears to be an adequate air supply to all classrooms, work spaces, and facilities (i.e. no strong odor is present, air is not stuffy)
- e. Interior temperatures appear to be maintained within normally accepted ranges.
- f. The ventilation units are not generating any excessive noise or vibrations.
- g. Other

Sewer

Sewer line stoppage is not evident. Examples include but are not limited to the following:

- a. There are no obvious signs of flooding caused by sewer line back-up in the facilities or on the school grounds. (X)
- b. The sanitary system controls odors as designed.
- c. Other

Interior Surfaces (Floors, Ceilings, Walls, and Window Casings)

Interior surfaces appear to be clean, safe, and functional. Examples include but are not limited to the following:

- a. Walls are free of hazards from tears and holes.
- b. Flooring is free of hazards from torn carpeting, missing floor tiles, holes.
- c. Ceiling is free of hazards from missing ceiling tiles and holes.
- d. There is no evidence of water damage (e.g. no condensation, dampness, staining, warping, peeling, mineral deposits, etc.)
- e. Other

Overall Cleanliness

School grounds, buildings, common areas, surfaces, and individual rooms appear to have been cleaned regularly. Examples include but are not limited to the following:

- a. Restrooms, drinking fountains, and food preparation or serving areas appear to have been cleaned each day that school is in session.

- b. An area should appear to be clean with minimal dirt, dust, or buildup. Floors and carpets should appear to have been swept or cleaned within the last week. Light fixtures and all bulbs are working properly. Facilities area adequately stocked and odor free. (OK)
- c. An area marked as "Deficiency" would appear to not have been cleaned in the last two weeks and carpet may look dull, matted, or stained. Corners of the room may have a recognizable amount of dirt or grime buildup. Floors do not appear to have been swept or vacuumed in two weeks. Some light fixtures are dirty and fewer than five percent of the bulbs have burned out. Daily trash has not been taken out. (D)
- d. An area marked as having an "Extreme Deficiency" would appear to be dirty, dingy, or scuffed with an evident buildup of dust, dirt, stains, or trash. Floors have not been swept or vacuumed in over two weeks. Light fixtures are dirty and more than five percent of the bulbs have burned out. There is trash overflow and the area being evaluated has a foul odor. (X)
- e. Area(s) evaluated is free of unabated graffiti.
- f. Other

Part IIb (Optional) - The Cleanliness Detail worksheet may be used to evaluate the Overall Cleanliness of each area. Based on Part IIb, use the following to complete Part IIa: The district may choose how to report maintenance and custodial staff. The district may report staffing at the site or district level. Staffing may be based on assigned staff or represented as Full-Time Equivalent increments.

- a. If 75.0 percent or more of the review is "Yes", the area should be rated clean (OK).
- b. If 50 - 74.9 percent of the review is "Yes", the area should be rated "Deficient (D)".
- c. If 49.9 percent or less of the review is "Yes", the area should be rated Extreme Deficiency (X)

1. Floors swept, vacuumed, and/or mopped. Free of spots stains, and build up.
2. Walls and Doors free of spots and grime.
3. Desk and Counters clean.
4. Furniture dusted and clean.
5. Baseboards and window sills dusted and clean.
6. Light fixtures clean.
7. Sink clean and drains working properly.
8. Trash cans are empty and clean. The ground is free of trash. Floors and furniture are free of gum and/or other food residue.
9. Windows are free from damage, clean, and in working condition.
10. Water fountains, including handles/buttons, are clean and in working condition.
11. Toilets and bathroom sinks are clean and in working condition.
12. Mirrors and Hand Dryers are clean, intact, and in working condition.
13. Bathroom supplies are stocked and in working condition.
14. Area is free of graffiti.
15. Landscaping - Maintained sufficiently to not hinder student and staff.

Pest/Vermin Infestation

Pest or vermin infestation are not evident. Examples include but are not limited to the following:

- a. There is no evidence of a major pest or vermin infestation. (X)
- b. There are no holes in the walls, floors, or ceilings.
- c. Rodent droppings or insect skins are not evident.
- d. Odor caused by a pest or vermin infestation is not evident.
- e. There are no live rodents observed.
- f. Other

Electrical (Interior and Exterior)

1. There is no evidence that any portion of the school has a power failure. (X)
2. *Electrical systems, components, and equipment appear to be working properly.*
 - a. There are no exposed electrical wires. Electrical equipment is properly covered and secured from pupil access. (X)
 - b. Outlets, access panels, switch plates, junction boxes and fixtures are properly covered and secured from pupil access.
 - c. Other
3. *Lighting appears to be adequate and working properly, including exterior lights. Examples include but are not limited to the following:*
 - a. Lighting appears to be adequate.
 - b. Lighting is not flickering.
 - c. There is no unusual hum or noise from the light fixtures.
 - d. Other

Restrooms

Restrooms in the vicinity of the area being evaluated appear to be accessible during school hours, clean, functional and in compliance with SB 892 (EC Section 35292.5) and AB 367 (EC Section 35292.6). The following are examples of compliance with SB 892 and AB 367:

- a. Restrooms are maintained and cleaned regularly.
- b. Restrooms are fully operational.
- c. Restrooms are stocked with toilet paper, menstrual products, soap, and paper towels.
- d. Restrooms are open during school hours.
- e. Other

Sinks/Fountains (Inside and Outside)

Drinking fountains appear to be accessible and functioning as intended.

Examples include but are not limited to the following:

- a. Drinking fountains are accessible.
- b. Water pressure is adequate.
- c. A leak is not evident.
- d. There is no moss, mold, or excessive staining on the fixtures.
- e. The water is clear and without unusual taste or odor.
- f. Other

Fire Safety

The fire equipment and emergency systems appear to be functioning properly.

Examples include but are not limited to the following:

- a. The fire sprinklers appear to be in working order (e.g., there are no missing or damaged sprinkler heads). (X)
- b. Emergency alarms appear to be functional. (X)
- c. Emergency exit signs function as designed, exits are unobstructed. (X)
- d. Fire extinguishers are current and placed in all required areas.
- e. Fire alarms pull stations are clearly visible.
- f. Other

Hazardous Materials (Interior and Exterior)

There does not appear to be evidence of hazardous materials that may pose a threat to pupils or staff. Examples include but are not limited to the following:

- a. Hazardous chemicals, chemical waste, and flammable materials are stored properly (e.g. locked and labeled properly). (X)
- b. Paint is not peeling, chipping, or cracking.

- c. There does not appear to be damaged tiles or other circumstances that may indicate asbestos exposure.
- d. Surfaces (including floors, ceilings, walls, window casings, HVAC grills) appear to be free of mildew, mold odor and visible mold.
- e. Other

Structural Damage

There does not appear to be structural damage that has created or could create hazardous or uninhabitable conditions. Examples include but are not limited to the following:

- a. Severe cracks are not evident. (X)
- b. Ceilings & floors are not sloping or sagging beyond their intended design. (X)
- c. Posts, beams, supports for portable classrooms, ramps, and other structural building members appear to be intact, secure and functional as designed. (X)
- d. There is no visible evidence of severe cracks, dry rot, mold, or damage that undermines the structural components. (X)
- e. Other

When completing Part III of the FIT, the inspector should note the date and time of the

Roofs (observed from the ground, inside/outside the building)

Roof systems appear to be functioning properly. Examples include but are not limited to the following:

- a. Roofs, gutters, roof drains, and down spouts are free of visible damage.
- b. Roofs, gutters, roof drains, and down spouts are intact.
- c. Other

Playground/School Grounds

The playground equipment and school grounds in the vicinity of the area being evaluated evaluated appear to be clean, safe, and functional. Examples include but are not limited to the following:

- a. Significant cracks, trip hazards, holes and deterioration are not found.
- b. Open "S" hooks, protruding bolt ends, and sharp points/edges are not found in the playground equipment.
- c. Seating, tables, and equipment are functional and free of significant cracks.
- d. There are no signs of drainage problems, such as flooded areas, eroded soil, water damage to asphalt, or clogged storm drain inlets.
- e. Other

Windows/Doors/Gates/Fences (Interior and exterior)

Conditions that pose a safety and/or security risk are not evident. Examples include but are not limited to the following:

- a. There is no exposed broken glass accessible to pupils and staff. (X)
- b. Exterior doors and gates are functioning and do not pose a security risk. (X)
- c. Windows are intact and free of cracks.
- d. Windows are functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.
- e. Doors are intact.
- f. Doors are functional and open, close, and lock as designed, unless there is a valid reason they should not function as designed.
- g. Gates and fences appear to be functional.
- h. Gates and fences are intact and free of holes and other conditions that could present a safety hazard to pupils, staff, or others.
- i. Other

PART IIa: EVALUATION DETAIL

Date of Inspection: _____

School Name: _____

Building / Area Name	Estimated Square Footage	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
		GAS LEAKS	MECH/HVAC	SEWER	INTERIOR SURFACES	OVERALL CLEANLINESS	PEST/VERMIN INFESTATION	ELECTRICAL	RESTROOM	SINKS/ FOUNTAINS	FIRE SAFETY	HAZARDOUS MATERIALS	STRUCTURAL DAMAGE	ROOFS	PLAYGROUND/ SCHOOL GROUNDS	WINDOWS/ DOORS/ GATES/FENCES
		COMMENTS:														
		COMMENTS:														
		COMMENTS:														
		COMMENTS:														
		COMMENTS:														
		COMMENTS:														
		COMMENTS:														
District's Plan to Address:																
Deficiencies Noted in Prior Year?																

Marks: **OK** = Good Repair; **D** = Deficiency; **X** = Extreme Deficiency; **NA** = Not Applicable
 Use additional Area Lines as necessary.

NAME OF CLEANNESS DETAIL: _____ **Date of Inspection:** ____-____-____ **School Name:** = _____

NUMBER OF CUSTODIAL STAFF ASSIGNED TO SITE: _____

Building / Area Name	Area Characteristics (Grade level served, events, traffic volume, public usage, etc.)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Rating	
		Floors	Walls & Doors	Desks & Counters	Furniture	Baseboards /Window Sill	Light Fixtures	Sinks	Trash / Refuse	Windows	Water Fountains	Toilets	Mirrors & Hand Dryers	Bathroom Supplies	Graffiti	Landscaping		
		COMMENTS:																
		COMMENTS:																
		COMMENTS:																
		COMMENTS:																
		COMMENTS:																
		COMMENTS:																
		COMMENTS:																
		COMMENTS:																
District's Plan to Address:																		
Deficiency Noted in Prior Year?																		

Use additional Area Lines as necessary.

**FACILITY INSPECTION TOOL (FIT)
SCHOOL FACILITY CONDITIONS EVALUATION**

(REV 04/22)

SCHOOL DISTRICT/COUNTY OFFICE OF EDUCATION		COUNTY	
SCHOOL SITE		SCHOOL TYPE (GRADE LEVELS)	NUMBER OF CLASSROOMS ON SITE:
INSPECTOR'S NAME		INSPECTOR'S TITLE	NUMBER OF RESTROOMS ON SITE:
TOTAL ESTIMATED BUILDING VOLUME (CUBIC FEET):		TIME OF INSPECTION	NAME OF DISTRICT REPRESENTATIVE ACCOMPANYING THE INSPECTOR(S) (IF APPLICABLE)
TOTAL ESTIMATED SITE SQUARE FOOTAGE / ACREAGE:		WEATHER CONDITION AT TIME OF INSPECTION	SITE ENROLLMENT
TOTAL ESTIMATED BUILDING SQUARE FOOTAGE:			

PART III: CATEGORY TOTALS AND RANKING (round all calculations to two decimal places)

TOTAL NUMBER OF AREAS EVALUATED ↓	CATEGORY TOTALS	A. SYSTEMS			B. INTERIOR		C. CLEANLINESS		D. ELECTRICAL	E. RESTROOMS/FOUNTAINS		F. SAFETY		G. STRUCTURAL		H. EXTERNAL	
		GAS LEAKS	MECH/HVAC	SEWER	INTERIOR SURFACES	OVERALL CLEANLINESS	PEST/VERMIN INFESTATION	ELECTRICAL	RESTROOMS	SINKS/ FOUNTAINS	FIRE SAFETY	HAZARDOUS MATERIALS	STRUCTURAL DAMAGE	ROOFS	PLAYGROUND/ SCHOOL GROUNDS	WINDOWS/DOORS/ GATES/FENCES	
Number of "OK"s:																	
Number of "D"s:																	
Number of "X"s:																	
Number of N/As:																	
Percent of System in Good Repair Number of "OK"s divided by (Total Areas - "NA"s)*																	
Total Percent per Category (average of above)*																	
Rank (Circle one) GOOD = 90%-100% FAIR = 75%-89.99% POOR = 0%-74.99%																	

*Note: An extreme deficiency in any area automatically results in a "poor" ranking for that category and a zero for "Total Percent per Category".

OVERALL RATING:

DETERMINE AVERAGE PERCENTAGE OF 8 CATEGORIES ABOVE →		SCHOOL RATING** →	
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**For School Rating, apply the Percentage Range below to the average percentage determined above, taking into account the rating Description below.

PERCENTAGE	DESCRIPTION	RATING
99%-100%	The school meets most or all standards of good repair. Deficiencies noted, if any, are not significant and/or impact a very small area of the school.	EXEMPLARY
90%-98.99%	The school is maintained in good repair with a number of non-critical deficiencies noted. These deficiencies are isolated, and/or resulting from minor wear and tear, and/or in the process of being mitigated.	GOOD
75%-89.99%	The school is not in good repair. Some deficiencies noted are critical and/or widespread. Repairs and/or additional maintenance are necessary in several areas of the school site.	FAIR
0%-74.99%	The school facilities are in poor condition. Deficiencies of various degrees have been noted throughout the site. Major repairs and maintenance are necessary throughout the campus.	POOR

INSPECTOR'S COMMENTS AND RATING EXPLANATION:

DISTRICT'S RESPONSES TO REPORT (Attach additional pages if necessary):

THIRD READING

Bill No: AB 367
Author: Cristina Garcia (D), et al.
Amended: 8/26/21 in Senate
Vote: 21

SENATE EDUCATION COMMITTEE: 6-0, 6/23/21
AYES: Leyva, Ochoa Bogh, Cortese, Glazer, McGuire, Pan
NO VOTE RECORDED: Dahle

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 77-0, 6/1/21 - See last page for vote

SUBJECT: Menstrual products

SOURCE: Alliance for Girls
American Civil Liberties Union of California
Black Women for Wellness Action Project
California Association of Student Councils
California Latinas for Reproductive Justice
Free the Period
IGNITE
Period - The Menstrual Movement

DIGEST: This bill, the Menstrual Equity for All Act of 2021, (1) requires, beginning with the 2022-23 school year, all public schools maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school's restrooms at all times with an adequate supply of menstrual products in all women's restrooms and all-gender restrooms, and in at least one men's restroom; and (2) requires the California State University (CSU) and each community college district (CCD), and encourages the University of California (UC), independent institutions of higher education, and private postsecondary educational institutions,

to stock an adequate supply of menstrual products at no fewer than one designated and accessible central location on each campus.

ANALYSIS:

Existing law:

- 1) Requires public and private schools enrolling students from Kindergarten through 12th grade to ensure that every restroom is maintained and cleaned regularly, fully operational and stocked at all times with toilet paper, soap and paper towels or functional hand dryers. (Education Code § 35292.5)
- 2) Requires that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records. (EC § 221.5)
- 3) Requires a public school maintaining any combination of grades 6 to grade 12, inclusive, that meets the 40-percent pupil poverty threshold required to operate a federal Title I schoolwide program, to stock at least 50 percent of the school's restrooms with feminine hygiene products all times and prohibits those schools from charging for any menstrual products provided to pupils, including feminine hygiene products. (EC § 35292.6)
- 4) Requires a California Community College (CCC) campus that has shower facilities for student use to grant access, as specified, to those facilities to any homeless student who is enrolled in coursework, has paid enrollment fees, and is in good standing with the community college district. (EC § 76011)
- 5) Requires the CCC and the CSU, and encourages the UC, to provide reasonable accommodations on their respective campuses for a lactating students to express breast milk, breast-feed an infant child, or address other needs related to breast-feeding, and requires any new building or renovation of an existing building regularly used by students, to provide reasonable accommodations including a sink for lactating students. (EC § 66271.9)
- 6) Requires any business establishment, place of public accommodation, or state or local government to identify all single – user facilities as all-gender toilet facilities and for the signage to comply with Title 24 of the California Code of Regulations. (Health & Safety Code Section § 118600)

- 7) Exempts consumers from being charged a sales tax on the purchase of menstrual hygiene products until July 1, 2023. (Revenue & Taxation Code § 6363.10)

This bill:

- 1) Requires, on or before the start of the 2022–23 school year, a public school, including a school operated by a school district, county office of education, or charter school, maintaining any combination of classes from grades 6 to 12, inclusive, to stock the school’s restrooms at all times with an adequate supply of menstrual products (available and accessible, free of cost) in all women’s restrooms and all-gender restrooms, and in at least one men’s restroom.
- 2) Prohibits a public school from charging for any menstrual products provided to pupils.
- 3) Requires a public school to post a notice regarding the requirements of this bill in a prominent and conspicuous location in every restroom required to stock menstrual products.
- 4) Requires the notice to include the text of these provisions and contact information, including an email address and telephone number, for a designated individual responsible for maintaining the requisite supply of menstrual products.
- 5) Defines “menstrual products” to mean menstrual pads and tampons for use in connection with the menstrual cycle.
- 6) Makes the provisions above operative on July 1, 2022.
- 7) Clarifies the existing requirement for certain schools to stock at least 50 percent of the restrooms with menstrual products, to ensure those products are available and accessible, free of cost.
- 8) Extends the existing requirement on public schools to include a charter school and a school operated by a county superintendent of schools, and replaces references to feminine hygiene products with references to menstrual products.
- 9) Requires the CSU and each CCD to stock an adequate supply of menstrual products, available and accessible, at no cost, at no fewer than one designated and accessible central location on each campus.

- 10) Requires a location's accessibility to be determined by considering at least all of the following factors:
 - a) Hours of operation, relative to hours that students are on campus.
 - b) Proximity to high-traffic areas on campus.
 - c) Accessibility by students of all genders and regardless of physical ability.
 - d) Privacy, including whether accessing products would require interaction with staff or other students.
 - e) Safety.
- 11) Authorizes locations to include student centers, libraries, wellness or health centers, pantries, and study rooms.
- 12) Requires the CSU and each CCD to post a notice regarding these requirements in a prominent and conspicuous location in all women's restrooms and all-gender restrooms and in at least one men's restroom.
- 13) Encourages the Regents of the UC, independent institutions of higher education, and private postsecondary educational institutions to stock an adequate supply of menstrual products at no fewer than one designated and accessible central location on each campus.
- 14) Encourages, further, the Regents of the UC, independent institutions of higher education, private postsecondary educational institutions, if they implement these provisions, to post a notice regarding these provisions in a prominent and conspicuous location in all women's restrooms and all-gender restrooms and in at least one men's restroom.
- 15) Provides that a campus may provide more than one location where people may access menstrual products.
- 16) Defines, for purposes of all of these provisions, "menstrual products" mean to menstrual pads and tampons for use in connection with the menstrual cycle.
- 17) States that it is the intent of the Legislature that this bill provides for the health, dignity, and safety of menstruating students at every socioeconomic level, normalize menstruation among all genders, and foster gender competency in California schools, colleges, and universities.

Comments

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

Adolescent experience relating to menstruation and school. A 2019 Harris Interactive poll of 2,000 teens aged 13 to 19 in the United States commissioned by the nonprofit organization PERIOD and a menstrual products company found:

- 1) Two-thirds of teens have felt stress due to lack of access to period products.
- 2) 20% have struggled to afford period products or were not able to purchase them at all.
- 3) 61% have worn a tampon or pad for more than four hours because they did not have enough access to period products (which puts them at risk of infection and toxic shock syndrome (TSS)).
- 4) 84% have either missed class time or know someone who missed class time because they did not have access to period products.
- 5) 25% have missed class because of lack of access to period products.
- 6) 83% think lack of access to period products is an issue that is not talked about enough.
- 7) 66% do not want to be at school when they are on their period.
- 8) 69% feel embarrassed when they have to bring period products to the bathroom.
- 9) The majority (51%) of students feel like their school does not care about them if they do not provide free period products in their bathrooms.
- 10) 51% have missed at least part of a class or class period due to menstruation symptoms such as cramps.

Current accessibility of menstrual products on campus. As noted by the Assembly Higher Education Committee, “For the last several years the Legislature, in partnership with public institutions of higher education, has dedicated resources to

alleviate hunger and homelessness by securing access for college students to basic needs supports. Throughout the years the definition of basic needs has evolved beyond food and housing to include other basic needs supports such as technology and feminine hygiene products. In January 2021, BMC Women’s Health published a peer-reviewed study regarding the impact of period poverty and mental health implications among college-aged women in the United States. This report found 14.2% of college – aged women have experienced period poverty in the past year. To combat period poverty, the CCC, the CSU, and the UC along with student organizations on campuses have worked to provide free menstrual products on campus. In 2016, the Student Senate of the California Community Colleges (SSCCC) issued a resolution in which the lead organization for student voices on campus encouraged the CCC to implement personal hygiene products dispensers to ‘secure the necessities of all students with needs of basic personnel health items.’ Based on data collected prior to the COVID – 19 pandemic, the CCC Chancellor’s office indicated a number of community colleges offer free feminine hygiene products as part of the campus food pantries or the student health centers. CSU campuses currently provide free menstrual products on all student health centers. The menstrual products are also available in campus food pantries and Basic Needs Centers, but the availability may vary as these are stocked by donations the campus receives from community partners. For the UC system each campus has a different method of providing free menstrual products to students. For example, UC Davis and UC Irvine provide free menstrual products in half of the restrooms on campus.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- 1) This bill could result in one-time Proposition 98 General Fund costs of approximately \$2 million for school districts to install or modify menstrual product dispensers, and additional ongoing Proposition 98 General Fund costs of about \$1.3 million each year to provide free menstrual products. School districts may also incur additional, unknown costs to comply with this bill’s restroom noticing requirements. These costs are likely to be deemed reimbursable by the Commission on State Mandates.
- 2) The Chancellor’s Office estimates Proposition 98 General Fund costs of between \$57,500 and \$115,000 annually to provide free menstrual products at a centralized location on the 115 community college campuses. There could also be additional one-time costs, likely to be minor, for campuses to comply with this bill’s noticing requirements.

- 3) The UC estimates General Fund costs in the low tens of thousands of dollars annually to comply with this bill's requirements, while the CSU indicates General Fund costs of between \$750,000 and \$800,000 each year to provide additional menstrual products for its health centers.

SUPPORT: (Verified 8/27/21)

Alliance for Girls (co-source)
American Civil Liberties Union of California (co-source)
Black Women for Wellness Action Project (co-source)
California Association of Student Councils (co-source)
California Latinas for Reproductive Justice (co-source)
Free the Period (co-source)
IGNITE (co-source)
Period - The Menstrual Movement (co-source)
Advocates for Youth
American Association of University Women - California
American College of Obstetricians and Gynecologists District IX
Anti-Defamation League
California Alternative Payment Program Association
California Commission on the Status of Women and Girls
California Faculty Association
California School Boards Association
California School Nurses Organization
California State PTA
California State Student Association
California Teachers Association
California Women's Law Center
Child Care Law Center
Citizens for Choice
Conference of California Bar Associations
County of Santa Clara
Equal Rights Advocates
Feminist Majority Foundation
Legal Aid at Work
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
Planned Parenthood Affiliates of California
Religious Coalition for Reproductive Choice California
San Francisco Board of Supervisors
Student Senate for California Community Colleges

Training in Early Abortion for Comprehensive Healthcare
University of California Student Association
Voices for Progress Education Fund
Women's Foundation California

OPPOSITION: (Verified 8/27/21)

None received

ASSEMBLY FLOOR: 77-0, 6/1/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Bigelow, Voepel

Prepared by: Brandon Darnell / ED. / (916) 651-4105
8/31/21 9:27:39

**** **END** ****