

March 26, 2024

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

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

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

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

Public School Restrooms: Menstrual Products, 22-TC-04

Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022

Hesperia Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

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

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

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

Draft Expedited Parameters and Guidelines

Pursuant to California Code of Regulations, title 2, section 1183.9, Commission staff has expedited the parameters and guidelines process by preparing Draft Expedited Parameters and Guidelines to assist the claimant. The proposed reimbursable activities have been limited to those approved in the Decision by the Commission. Reasonably necessary activities to perform the mandated activities may be proposed by the parties. (Cal. Code Regs., tit. 2, §1183.7(d).) "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program (Cal. Code Regs., tit. 2, §1183.7(d).)

Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of the Commission's regulations.

Review of Draft Expedited Parameters and Guidelines

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

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

Rebuttals

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

Draft Proposed Decision and Parameters and Guidelines

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

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

Test Claimant and Department of Finance Submission of Letter of Intent

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

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

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

Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs

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

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.

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

Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs

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

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

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

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

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

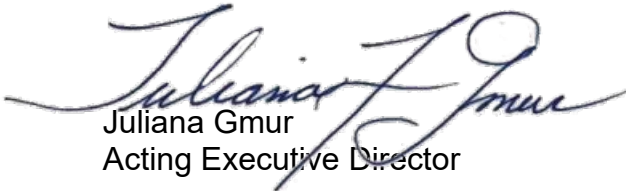
If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission’s regulations.

Mr. Palkowitz and Ms. Sidarous
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Hearing

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

Sincerely,



Juliana Gmur
Acting Executive Director

DRAFT EXPEDITED PARAMETERS AND GUIDELINES

Education Code Section 35292.6

Statutes 2021, Chapter 664 (AB 367)

Public School Restrooms: Menstrual Products

22-TC-04

Period of reimbursement begins January 1, 2022

I. SUMMARY OF THE MANDATE

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

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

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

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

II. ELIGIBLE CLAIMANTS

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

III. PERIOD OF REIMBURSEMENT

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

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

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

IV. REIMBURSABLE ACTIVITIES

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

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

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

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

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

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

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

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

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

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

In the reimbursement claims, claimants shall identify:

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

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets

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

B. Indirect Cost Rates

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

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

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

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On March 26, 2024, I served the:

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

Public School Restrooms: Menstrual Products, 22-TC-04

Statutes 2021, Chapter 664 (AB 367); Education Code Section 35292.6; effective January 1, 2022

Hesperia Unified School District, Claimant

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

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



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

Mailing List

Last Updated: 3/15/24

Claim Number: 22-TC-04

Matter: Public School Restrooms: Menstrual Products

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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