

May 10, 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 Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing**  
*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:

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

### **Written Comments**

Written comments may be filed on the Draft Proposed Decision and Proposed Parameters and Guidelines no later than **5:00 pm on May 31, 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.<sup>1</sup>

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).)

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

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

### **Hearing**

This matter is set for hearing on **Friday, July 26, 2024** at 10:00 a.m. The Proposed Decision will be issued on or about July 12, 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 as a witness in this meeting on Zoom 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,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey  
Executive Director

**ITEM \_\_\_\_**

**DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES**

Education Code Section 35292.6

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

*Public School Restrooms: Menstrual Products*

22-TC-04

Period of Reimbursement begins January 1, 2022

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**EXECUTIVE SUMMARY**

**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. The Act requires public schools, 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 be stocked with menstrual products.<sup>1</sup>

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:

1. 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

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<sup>1</sup> The Act was amended by Statutes 2023, chapter 421 to expand the requirements to pupils in grades 3 through 12, inclusive. This Decision makes no findings on the amended Act.

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).

2. 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.
3. 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.<sup>2</sup>

## **II. Procedural History**

The Commission adopted the Test Claim Decision on March 22, 2024.<sup>3</sup> Commission staff issued the Draft Expedited Parameters and Guidelines on March 26, 2024.<sup>4</sup> The claimant,<sup>5</sup> the Department of Finance (Finance),<sup>6</sup> and the State Controller’s Office (Controller)<sup>7</sup> all filed comments on the Draft Expedited Parameters and Guidelines on April 16, 2024. Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on May 10, 2024, for the July 26, 2024 hearing.<sup>8</sup>

## **III. Positions of the Parties**

### **A. Hesperia Unified School District**

In comments on the Draft Expedited Parameters and Guidelines, the claimant states that it incurred costs to purchase and install dispensers as the most efficient and cost-effective way to comply with the mandate. The claimant relies on declarations signed under penalty of perjury by the District’s Deputy Superintendent of Business Services

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<sup>2</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 3-4.

<sup>3</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024.

<sup>4</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024.

<sup>5</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>6</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>7</sup> Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>8</sup> Exhibit F, Draft Proposed Decision and Parameters and Guidelines issued May 10, 2024.

submitted with its Test Claim and rebuttal comments.<sup>9</sup> Based on this evidence, the claimant requests adding to the Parameters and Guidelines reimbursement to purchase and install “a sufficient number of suitable dispensers” for schools that met the 40-percent pupil poverty level that were required to comply with prior law, as well as “a sufficient number of suitable dispensers for schools that did not meet the 40-percent pupil poverty level under prior law.”<sup>10</sup> The claimant also proposes that the Parameters and Guidelines state a “sufficient number of dispensers necessary to stock the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.”<sup>11</sup> Finally, the claimant requests the Parameters and Guidelines to include that purchasing and installing new dispensers “is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate . . . , whichever is more cost effective.”<sup>12</sup>

### **B. Department of Finance**

Finance comments that the test claim statute’s intent is to expand student access to menstrual products, so the reimbursable activities should specify *pupil* restrooms rather than all restrooms.<sup>13</sup> Further, Finance suggests that, because the test claim statute requires stocking at least one men’s restroom with menstrual products, the claimants should be required to specify the total number of men’s restrooms in the school regardless of compliance with the previous test claim to ensure compliance with the test claim statute. Finance also states that the Parameters and Guidelines “should clearly state that reimbursement is not required to stock menstrual products in more than one men’s restroom, in staff restrooms, or in school restrooms not required by statute.”<sup>14</sup>

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<sup>9</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>10</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>11</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>12</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>13</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>14</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

### **C. State Controller's Office**

The Controller “recommend no changes” to the Draft Expedited Parameters and Guidelines.<sup>15</sup>

#### **IV. Discussion**

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

Consistent with the Test Claim Decision,<sup>16</sup> the Parameters and Guidelines define the eligible claimants as:

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.

##### **B. Period of Reimbursement (Section III. of the Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. As stated in the Test Claim Decision, the claimant filed the Test Claim on May 12, 2023, establishing eligibility for reimbursement for the 2021-2022 fiscal year.<sup>17</sup> The test claim statute became effective on January 1, 2022, and has a delayed operative date of July 1, 2022.<sup>18</sup> As noted in the Test Claim Decision, the test claim statute requires the restrooms to be stocked “[o]n or before the start of the 2022–23 school year.”<sup>19</sup> Based on the effective date of the statute, however, Section III. of the Parameters and Guidelines states that allowable costs incurred are reimbursable on or after January 1, 2022.

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

###### **1. There is substantial evidence in the record that purchasing and installing, or repairing or retrofitting, dispensers to provide menstrual products is reasonably necessary to comply with the mandate.**

In comments on the Draft Expedited Parameters and Guidelines, the claimant requests adding to Section IV. of the Parameters and Guidelines to purchase and install, or retrofit and repair, dispensers for the menstrual products as reasonably necessary to comply with the mandate.

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<sup>15</sup> Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024.

<sup>16</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 4, 19-20.

<sup>17</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 19.

<sup>18</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 18-19.

<sup>19</sup> Education Code section 35292.6(a) (Stats. 2021, ch. 664). Exhibit A, Test Claim Decision, adopted March 22, 2024, page 18.

The Commission’s regulations require the Parameters and Guidelines to identify the activities mandated by the state and “may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.”<sup>20</sup> “Reasonably necessary activities” are defined in pertinent part as those “necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes . . . that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible.”<sup>21</sup> Proposed reasonably necessary activities must be supported by substantial evidence in the record explaining why they are necessary to perform the state-mandated activity.<sup>22</sup>

In comments on the Draft Expedited Parameters and Guidelines, the claimant states that it incurred costs to purchase and install dispensers as the most efficient and cost-effective way to comply with the mandate. The claimant relies on declarations signed under penalty of perjury by the District’s Deputy Superintendent of Business Services submitted with its Test Claim that identified various costs to comply with the test claim statute, including for dispensers and installation.<sup>23</sup> There is no evidence rebutting either the claimant’s declarations or the other information in the record, and the claimant’s request is consistent with the Parameters and Guidelines for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, the related claim.<sup>24</sup>

Accordingly, staff finds there is substantial evidence in the record to support the request to add purchasing and installing or retrofitting and repairing dispensers for the menstrual products as a reasonably necessary activity to the extent that a school is not already equipped with, or cannot retrofit or repair, a sufficient number of dispensers in their restrooms to comply with the mandate, consistent with the Decision in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

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<sup>20</sup> Government Code section 17557(a) and section 1183.7.

<sup>21</sup> California Code of Regulations, title 2, section 1183.7(d).

<sup>22</sup> Government Code section 17557; California Code of Regulations, title 2, sections 1183.7(d), 1187.5; Code of Civil Procedure section 1094.5(b), stating that “[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”

<sup>23</sup> These figures were resubmitted in a later-submitted declaration. Exhibit X (3), Claimant’s Rebuttal Comments on the Test Claim, filed August 17, 2023, pages 2, 6 (Landon Declaration).

<sup>24</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019.

<https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed on April 26, 2024), page 26.

**2. Limiting the restrooms required to be stocked with menstrual products to “pupil” restrooms, as requested by Finance, is inconsistent with the test claim statute and is therefore denied.**

Finance proposes limiting reimbursement to stocking menstrual products only in *pupil* restrooms.<sup>25</sup> However, this request is not consistent with the test claim statute, which provides that schools “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.”<sup>26</sup> The statute does not limit the restrooms required to be stocked with menstrual products to pupil restrooms. According to the California Department of Education’s (CDE’s) K-12 Toilet Requirement Summary, the California Plumbing Code does not require specific toilets for staff and pupils.<sup>27</sup> And schools may have single occupancy restrooms designated as all-gender. So limiting the restrooms required to be stocked with feminine hygiene products to only “pupil” restrooms is not consistent with the flexibility available for school restroom facilities. Accordingly, this request is denied.

**3. Clarifying language is added to the Parameters and Guidelines to state that reimbursement is not required to stock menstrual products in more than one men’s restroom, as requested by Finance.**

Finance contends that the Parameters and Guidelines “should clearly state that reimbursement is not required to stock menstrual products in more than one men’s restroom or in school restrooms not required by statute.”<sup>28</sup>

The plain language of the test claim statute requires schools to stock an adequate supply of menstrual products “in all women's restrooms and all-gender restrooms, and in *at least one men's restroom*.”<sup>29</sup> Schools are not mandated to stock menstrual products in more than one men’s restroom. Thus, staff agrees with Finance’s proposed amendment to Section IV. of the Parameters and Guidelines to clarify that the stocking only one men’s restroom with menstrual products is required, with additional clarification that only one men’s restroom “per school” must be stocked.

However, Finance’s additional proposed language, that reimbursement is not required to stock menstrual products in “school restrooms not required by statute,” is vague and unnecessary and duplicates the more specific plain language of the test claim statute, as reflected in Section IV.A. of the Parameters and Guidelines that authorizes

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<sup>25</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1. Emphasis in original.

<sup>26</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added.

<sup>27</sup> Exhibit X (1), CDE, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on April 19, 2024).

<sup>28</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>29</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added.



reimbursement to stock “all” women’s restrooms and all-gender restrooms, and one men’s restroom per school.<sup>30</sup> Thus, Finance’s request to include this additional language is denied.

**4. The Parameters and Guidelines require the claimants to identify in their reimbursement claims specified information regarding the number of schools in the claimant’s jurisdiction that maintain any combination of classes from grades 6 to 12, enrollment information, the number of schools that had to comply with the mandate under prior law, and the number of restrooms now required to be stocked with menstrual products.**

The Draft Expedited Parameters and Guidelines included a requirement to identify in reimbursement claims specified information to support actual costs incurred for labor and materials to stock the school’s restrooms at all times with an adequate supply of menstrual products, including the number of schools maintaining grades 6 to 12 in the claimant’s jurisdiction, the number of schools required to comply with prior law, and the number of female and all-gender restrooms in each school required to comply with the mandate. Both Finance and the claimant propose adding information to these reporting requirements.

Finance suggests, without explanation, that the claimants should be required to specify the total number of men’s restrooms in the school regardless of compliance with the previous Test Claim to ensure compliance with the test claim statute.<sup>31</sup> Given the requirement to stock only one men’s restroom per grade 6-12 school with menstrual products, and that the Draft Expedited Parameters and Guidelines require reporting the number of grade 6-12 schools in the claimant’s jurisdiction, it is unclear why reporting this information would be relevant or reasonably necessary. There is no evidence in the record to show that requiring the claimants to identify the total number of men’s restrooms is reasonably necessary because all the information needed to reimburse school districts, at one men’s restroom per school, is the number of schools. Therefore, Finance’s request is denied.

The claimant requests that the number of dispensers eligible for reimbursement should be based, in part, on the school’s total enrollment of *female* pupils in grades 6 to 12 for each claim year. Staff agrees that determining an adequate supply of menstrual products and dispensers depends on the enrollment of pupils in grades 6 to 12 that may use those products, which includes female pupils, the number of products those pupils may use each school year,<sup>32</sup> and the number of restrooms now required to be stocked.

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<sup>30</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added. Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024, page 7.

<sup>31</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>32</sup> The Commission’s Statewide Cost Estimate for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, estimated 138 products per pupil per year. (Exhibit X (5), Commission on State Mandates, Statewide Cost Estimate on *Public School Restrooms*:

This information is consistent with reporting under the Parameters and Guidelines for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.<sup>33</sup>

However, this mandate is not limited to female pupils. Rather, the legislative intent of the Menstrual Equity for All Act is to provide menstrual products “at all times” to all genders, including transgender men, nonbinary, and gender nonconforming students.<sup>34</sup> And, enrollment numbers for this pupil population are not available. The Office of the Legislative Analyst estimated that less than one percent of the population aged 13 years and over identify as transgender, and that transgender and nonbinary persons generally comprise similarly small shares of pupils in the public education system.<sup>35</sup> And the legislative history of the test claim statute estimates increased costs of 10 percent based on additional dispensers in men’s and all-gender restrooms and the increased population of pupils subject to the mandate.<sup>36</sup>

Therefore, to support the actual cost incurred as a result of this mandate, the Parameters and Guidelines require claimants to provide each school’s total enrollment of female pupils, and its estimate of the total enrollment of transgender, nonbinary, and gender nonconforming pupils, who may use menstrual products in grades 6 to 12 in the claim year.

#### **V. Staff Recommendation**

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

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*Feminine Hygiene Products*, 18-TC-01, adopted December 4, 2020, [https://csm.ca.gov/decisions/18-TC-01\\_120920.pdf](https://csm.ca.gov/decisions/18-TC-01_120920.pdf) (accessed on April 26, 2024), pages 14-15.) The Legislature used the Commission’s Statewide Cost Estimate when estimating the costs of the mandate. (Exhibit A, Test Claim Decision, adopted March 22, 2024, page 9 (citing to Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2.)

<sup>33</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019. <https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed on April 26, 2024), page 25.

<sup>34</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 7-8 (citing to Stats. 2021, ch. 664, § 1.).

<sup>35</sup> Exhibit X (6), Legislative Analyst’s Office, Letter to Attorney General Rob Bonta regarding a proposed ballot measure, November 14, 2023, <https://lao.ca.gov/ballot/2023/230519.pdf> (accessed on April 25, 2024), page 2.

<sup>36</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 8 (citing Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2.).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

<p><b>IN RE PARAMETERS AND GUIDELINES</b></p> <p>Education Code Section 35292.6</p> <p>Statutes 2021, Chapter 664, Sections 1 and 3, (AB 367)</p> <p>The period of reimbursement begins January 1, 2022</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 July 26, 2024)</i></p>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Decision and Parameters and Guidelines during a regularly scheduled hearing on July 26, 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/rejected] the Decision and Parameters and Guidelines by a vote of [vote will be included in the adopted Decision and Parameters and Guidelines], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller	
Jennifer Holman, Representative of the Director of the Office of Planning and Research	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	

## 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. The Act requires public schools, 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 be stocked with menstrual products.<sup>37</sup>

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.<sup>38</sup>

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<sup>37</sup> The Act was amended by Statutes 2023, chapter 421 to expand the requirements to pupils in grades 3 through 12, inclusive. This Decision makes no findings on the amended Act.

<sup>38</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 3-4.

## II. Procedural History

The Commission adopted the Test Claim Decision on March 22, 2024.<sup>39</sup> Commission staff issued the Draft Expedited Parameters and Guidelines on March 26, 2024.<sup>40</sup> The claimant, the Department of Finance (Finance), and the State Controller's Office (Controller), all filed comments on the Draft Expedited Parameters and Guidelines on April 16, 2024.<sup>41</sup> Commission staff issued the Draft Proposed Decision and Parameters and Guidelines on May 10, 2024,<sup>42</sup> for the July 26, 2024 hearing.

## III. Positions of the Parties

### A. Hesperia Unified School District

In comments on the Draft Expedited Parameters and Guidelines, the claimant requests reimbursement to purchase and install dispensers as the most efficient and cost-effective way to comply with the mandate.<sup>43</sup> The claimant relies on declarations submitted with the Test Claim and Test Claim Rebuttal Comments, which were signed under penalty of perjury by the District's Deputy Superintendent of Business Services. The declaration submitted with the Test Claim identified costs of \$43,625.73 for the 2022-2023 school year to comply with the test claim statute, which includes \$37,442.05 for dispensers, \$3,299.92 for installation, and \$2,883.76 for menstrual products.<sup>44</sup> The claimant states the test claim statute requires it to install dispensers in 100 additional restrooms, for which it incurred increased costs.<sup>45</sup> The claimant's declaration, submitted with its rebuttal to Finance's comments on the Test Claim, states its selection of dispensers was determined by its Director of Risk Management and a third-party vendor as the most efficient and cost-effective method to deliver the menstrual

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<sup>39</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024.

<sup>40</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024.

<sup>41</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024; Exhibit D, Finance's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024; and Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024.

<sup>42</sup> Exhibit F, Draft Proposed Decision and Parameters and Guidelines issued May 10, 2024.

<sup>43</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>44</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>45</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

products.<sup>46</sup> Based on this evidence, the claimant requests adding the following reasonably necessary activities to Section IV. of the Parameters and Guidelines:

B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers 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) and 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) to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, for feminine hygiene products (defined only as tampons and sanitary napkins)

Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers 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.

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

Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate (as stated in Section IV. C. of these Parameters and Guidelines), whichever is more cost effective.<sup>47</sup>

### **B. Department of Finance**

Finance comments that the test claim statute’s intent was to expand student access to menstrual products, so the reimbursable activities for which a claimant seeks reimbursement should be limited to pupil restrooms rather than all restrooms.<sup>48</sup> Further, Finance suggests that, because the test claim statute requires stocking at least one men’s restroom with menstrual products, the claimants should be required to specify the total number of men’s restrooms in the school regardless of compliance with the

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<sup>46</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>47</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>48</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

previous Test Claim, to ensure compliance with the test claim statute.<sup>49</sup> Finance also states that the Parameters and Guidelines “should clearly state that reimbursement is not required to stock menstrual products in more than one men’s restroom, in staff restrooms, or in school restrooms not required by statute.”<sup>50</sup>

### **C. State Controller’s Office**

The Controller submitted comments that “recommend no changes” to the Draft Expedited Parameters and Guidelines.<sup>51</sup>

## **IV. Discussion**

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

The Test Claim Decision found that the test claim statute imposed a reimbursable state-mandated program on school districts, including county offices of education.<sup>52</sup> 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.<sup>53</sup> Therefore, Section II. of the Parameters and Guidelines defines the eligible claimants as:

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.

### **B. Period of Reimbursement (Section III. of the Parameters and Guidelines)**

As noted in the Test Claim Decision, the test claim statute became effective on January 1, 2022, and has a delayed operative date of July 1, 2022:

The test claim statute has an effective date of January 1, 2022, and an operative date of July 1, 2022. [Fn. omitted.] The Legislature often postpones the operation of a statute until a later date to allow “persons

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<sup>49</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>50</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>51</sup> Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024.

<sup>52</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 4, 19-20.

<sup>53</sup> Education Code section 1010. As indicated in the test claim decision, 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.) Exhibit A, Test Claim Decision, adopted March 22, 2024, page 18.

and agencies affected by it to become aware of its existence and to comply with its terms.” [Fn. omitted.] Here, the test claim statute states that the restrooms must be stocked “[o]n or before the start of the 2022–23 school year.” [Fn. omitted.]<sup>54</sup>

The Test Claim Decision found that the period of reimbursement begins on January 1, 2022, the statute’s effective date, as follows:

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 [Test Claim] 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.<sup>55</sup>

Section III. of the Parameters and Guidelines therefore states that allowable costs incurred are reimbursable on or after January 1, 2022.

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

**1. There is substantial evidence in the record that purchasing and installing, or repairing or retrofitting, dispensers to provide menstrual products is reasonably necessary to comply with the mandate.**

In comments on the Draft Expedited Parameters and Guidelines, the claimant requests adding a reimbursable activity to Section IV. of the Parameters and Guidelines to purchase and install, or retrofit and repair, dispensers for the menstrual products as reasonably necessary to comply with the mandate. Specifically, the claimant requests adding the following language to Section IV. of the Parameters and Guidelines:

B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers 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) and 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) to stock an adequate supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils, for feminine hygiene products (defined only as tampons and sanitary napkins)

Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers 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

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<sup>54</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 18.

<sup>55</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 19.



supply of menstrual products (defined as menstrual pads and tampons), available and accessible, free of cost for pupils.

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

Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate (as stated in Section IV.C. of these Parameters and Guidelines), whichever is more cost effective.<sup>56</sup>

The Commission's statutes and regulations require that the Parameters and Guidelines identify the activities mandated by the state and "may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program."<sup>57</sup> "Reasonably necessary activities" are defined in the Commission's regulations as:

"Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>58</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why it is necessary to perform the state-mandated activity.<sup>59</sup>

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<sup>56</sup> Exhibit C, Claimant's Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2.

<sup>57</sup> Government Code section 17557(a), California Code of Regulations, title 2, section 1183.7.

<sup>58</sup> California Code of Regulations, title 2, section 1183.7(d).

<sup>59</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5; Code of Civil Procedure section 1094.5(b), stating that "[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

In comments on the Draft Expedited Parameters and Guidelines, the claimant states that it incurred costs to purchase and install dispensers as the most efficient and cost effective way to comply with the mandate.<sup>60</sup> The claimant relies on the following evidence in support of its request:

- A declaration submitted with the Test Claim and signed under penalty of perjury by the District’s Deputy Superintendent of Business Services that identified costs of \$43,625.73 for the 2022-2023 school year to comply with the test claim statute, including \$37,442.05 for dispensers, \$3,299.92 for installation as follows:

Increased cost of purchasing Dispensers during FY 2022-2023

EVOGEN EVI- DISPENSER (59 UNITS) \$22,090.81

EVOGEN EVI- DISPENSER (41 UNITS) \$15,351.24

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.

August 5, 2022

September 16, 2022

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.<sup>61</sup>

- A declaration submitted with the Claimant’s Rebuttal Comments on the Test Claim, which was signed under penalty of perjury by the District’s Deputy Superintendent of Business Services that states “selection of dispensers was

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<sup>60</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>61</sup> This declaration was also submitted in the Test Claim rebuttal comments. Exhibit X (3), Claimant’s Rebuttal Comments on the Test Claim, filed August 17, 2023, pages 2, 6 (Landon Declaration).

determined by its Director of Risk Management and a third-party vendor as the most efficient and cost-effective method for delivering the menstrual products.”<sup>62</sup>

In addition, the claimant’s request is supported by “The Menstrual Equity for All Act; A Handbook for California Public School Districts” that lists benefits and drawbacks of three types of dispensers based on the following “storage” considerations:

- a. Menstrual products must be stored in a clean and dry place.
- b. Not all menstrual products have the same shape and size.
- c. Menstrual products must be accessible to all students, and some students may have different accessibility needs.<sup>63</sup>

And, as stated in the Commission’s Test Claim Decision, the legislative history for the test claim statute expected costs of “\$2 million to LEAs [Local Education Agencies or School Districts] to install or modify menstrual product dispensers.”<sup>64</sup>

There is no evidence rebutting the claimant’s declarations or the information in the record. In addition, the Commission approved reimbursement to purchase and install dispensers in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, the prior related Test Claim, as follows:

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

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

*Reimbursement to purchase and install new dispensers is required to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the*

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<sup>62</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1. Exhibit X (3), Claimant’s Rebuttal Comments on the Test Claim, filed August 17, 2023, pages 2, 6 (Landon Declaration).

<sup>63</sup> Exhibit X (7), “The Menstrual Equity for All Act; A Handbook for California Public School Districts, January 2023”, [https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook\\_Final.pdf](https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook_Final.pdf) (accessed on April 26, 2024), page 16.

<sup>64</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 9 (citing to Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2).

*mandate (as stated in Section IV. C. of these Parameters and Guidelines), whichever is more cost effective.*<sup>65</sup>

Accordingly, the Commission finds there is substantial evidence in the record to support the request to add purchasing and installing or retrofitting and repairing dispensers for the menstrual products as a reasonably necessary activity to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate, consistent with the Decision in *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

**2. Limiting the restrooms required to be stocked with menstrual products to “pupil” restrooms, as requested by Finance, is inconsistent with the test claim statute and is therefore denied.**

Finance proposes limiting reimbursement to stocking menstrual products only in *pupil* restrooms, stating: “The reimbursable activities and restrooms for which a Claimant seeks reimbursement should specify **pupil** restrooms, not all restrooms, in line with the intent of the test claim statute.”<sup>66</sup>

However, this request is not consistent with the test claim statute. The activity approved by the Commission tracks the statutory language in Education Code section 35292.6(a), which states that a public school required to comply with the mandate “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.”<sup>67</sup> The plain language of the test claim statute does not limit the restrooms to pupil restrooms.

In addition, the California Department of Education’s (CDE’s) K-12 Toilet Requirement Summary states that the California Plumbing Code does not require specific toilets for staff and pupils. Although CDE recommends providing separate staff toilets due to safety and liability concerns, some schools may not have separate restrooms for pupils and staff.<sup>68</sup> Furthermore, schools may have single occupancy restrooms designated as all-gender. Thus, limiting the restrooms required to be stocked with feminine hygiene products to only “pupil” restrooms is not consistent with the plain language of the test

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<sup>65</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019, <https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed April 29, 2024), page 26. Emphasis in original.

<sup>66</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1. Emphasis in original.

<sup>67</sup> Emphasis added.

<sup>68</sup> Exhibit X (1), California Department of Education, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on April 19, 2024).

claim statute or the flexibility available for school restroom facilities. Accordingly, this request is denied.

**3. Clarifying language is added to the Parameters and Guidelines to state that reimbursement is not required to stock menstrual products in more than one men’s restroom, as requested by Finance.**

Finance contends that the Parameters and Guidelines “should clearly state that reimbursement is not required to stock menstrual products in more than one men’s restroom or in school restrooms not required by statute.”<sup>69</sup>

The plain language of the test claim statute requires schools to stock an adequate supply of menstrual products “in all women’s restrooms and all-gender restrooms, and in *at least one men’s restroom*.”<sup>70</sup> The “at least” language could result in schools supplying more than one men’s restroom with menstrual products at the State’s expense. However, the test claim statute does not mandate schools to stock menstrual products in more than one men’s restroom. Thus, the Commission agrees with Finance’s proposed amendment to Section IV. of the Draft Expedited Parameters and Guidelines to clarify that the mandate requires stocking only one men’s restroom, with additional clarification that only one men’s restroom “per school” must be stocked:

**Reimbursement is not required to stock any products other than menstrual pads and tampons for pupils, or to stock menstrual products in more than one men’s restroom per school.**

However, the additional language Finance proposes – that reimbursement is not required to stock menstrual products in “school restrooms not required by statute” – is vague and duplicative and unnecessary. The language in Section IV. now limits reimbursement to stocking “all women’s restrooms and all-gender restrooms, and one men’s restroom.” This language is clear, more specific, and more consistent with the plain language of the test claim statute to stock “all” women’s restrooms and all-gender restrooms, and at least one men’s restroom per school.<sup>71</sup> Thus, Finance’s request to include this additional language is denied.

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<sup>69</sup> Exhibit D, Finance’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>70</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added.

<sup>71</sup> Education Code section 35292.6 (Stats. 2021, ch. 664). Emphasis added. Exhibit B, Draft Expedited Parameters and Guidelines, issued March 26, 2024, page 7.

**4. The Parameters and Guidelines require the claimants to identify in their reimbursement claims specified information regarding the number of schools in the claimant’s jurisdiction that maintain any combination of classes from grades 6 to 12, enrollment information, the number of schools that had to comply with the mandate under prior law, and the number of restrooms now required to be stocked with menstrual products.**

The Draft Expedited Parameters and Guidelines required the claimants to identify in their reimbursement claims the following information to support the actual costs claimed for labor and materials to stock the school’s restrooms all times with an adequate supply of menstrual products:

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.<sup>72</sup>

Both Finance and the claimant propose adding information to these reporting requirements.

- a. There is no evidence in the record to support Finance’s request for the Parameters and Guidelines to require identifying the number of men’s restrooms with the other information required to be reported with the reimbursement claim, so this request is denied.

In response to the Draft Expedited Parameters and Guidelines, Finance suggests, without explanation, that “Claimants should be required to specify the total number of

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<sup>72</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024, page 7.

men’s restrooms in the school regardless of their compliance with the previous test claim, to ensure compliance with the test claim statute.”<sup>73</sup> Given the requirement to stock only one men’s restroom per reported (grade 6-12) school with menstrual products, and that the Draft Expedited Parameters and Guidelines require reporting the number of grade 6-12 schools in the claimant’s jurisdiction, it is unclear why reporting the total number of men’s restrooms per school would be relevant or reasonably necessary.

Consistent with the Test Claim Decision, the Draft Expedited Parameters and Guidelines define the number of additional restrooms required to be stocked as Title 1 schools that met the 40 percent pupil poverty level and were required to comply with prior law 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).”<sup>74</sup> Thus, the Parameters and Guidelines require a claimant to identify the number of women’s restrooms and the number of all-gender restrooms in the school, then add one men’s restroom and subtract 50 percent of the total number of restrooms in the school to isolate the higher level of service, resulting in this formula:

$$(\text{all women’s restrooms}) + (\text{all all-gender restrooms}) + (\text{one men’s room}) - (\text{50\% of all restrooms}) = (\text{all new restrooms required to be stocked}).$$

For example, if a school has a total of eight restrooms, four of which are women’s restrooms and one of which is an all-gender restroom, then that school would be required to stock menstrual products in two additional restrooms as follows: (4 + 1 + 1 male restroom – (50% of 8 = 4)) = 2 new restrooms to be stocked).

The Draft Expedited Parameters and Guidelines also authorize reimbursement for non-Title 1 schools that did *not* meet the 40-percent pupil poverty level under prior law that are now required to stock all women’s restrooms, any all-gender restrooms, and one male restroom with menstrual products.<sup>75</sup> The claimants would identify the total number of women’s restrooms and all-gender restrooms, and stock one additional men’s restroom. Thus, like the example above (except not subtracting 50 percent of all restrooms), the school is now required to stock six restrooms with menstrual products (4 + 1 + 1 = 6 restrooms to be stocked).

There is no evidence in the record to show that requiring the claimants to identify the total number of men’s restrooms is reasonably necessary or relevant. Therefore, Finance’s request, to specify the total number of men’s restrooms in the school regardless of compliance with the previous test claim, is denied.

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<sup>73</sup> Exhibit D, Finance Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 1.

<sup>74</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024, page 7.

<sup>75</sup> Exhibit B, Draft Expedited Parameters and Guidelines issued March 26, 2024, page 8.

- b. To support the actual costs claimed, the Proposed Parameters and Guidelines also require all the claimants to provide each school’s total enrollment of female pupils and its estimate of the total enrollment of transgender, nonbinary, and gender nonconforming pupils who may use menstrual products in grades 6 to 12.

The claimant also requests that the number of dispensers eligible for reimbursement should be based, in part, on the school’s total enrollment of *female* pupils in grades 6 to 12 for each claim year with the following proposed language:

The sufficient number of dispensers necessary to stock the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and *the school’s total enrollment of female pupils in grades 6 to 12 in the claim year.*<sup>76</sup>

The Commission agrees that determining the adequate supply of menstrual products and dispensers to provide those products in accordance with the mandate depends on the enrollment of pupils in grades 6 to 12 that may use those products, the number of products those pupils may use each school year,<sup>77</sup> and the number of restrooms now required to be stocked. In this respect, the Parameters and Guidelines for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, defined a “sufficient amount” of menstrual products and dispensers as:

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

[¶] . . . [¶]

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<sup>76</sup> Exhibit C, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, filed April 16, 2024, page 2. Emphasis added.

<sup>77</sup> The Commission’s Statewide Cost Estimate for *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, estimated that each pupil used three products per day for five days a week for each month of the school year, or 138 products per pupil per year, based on information from the Food and Drug Administration and Planned Parenthood. (Exhibit X (5), Commission on State Mandates, Statewide Cost Estimate on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted December 4, 2020, [https://csm.ca.gov/decisions/18-TC-01\\_120920.pdf](https://csm.ca.gov/decisions/18-TC-01_120920.pdf) (accessed on April 26, 2024), pages 14-15.) The Legislature used those figures when estimating the costs of the mandate. (Exhibit A, Test Claim Decision, adopted March 22, 2024, page 9 (citing to Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2). See also, Exhibit X (7), “The Menstrual Equity for All Act; A Handbook for California Public School Districts, January 2023”, [https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook\\_Final.pdf](https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook_Final.pdf) (accessed on April 26, 2024), page 16, which estimated average usage at three products per pupil per month.



The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times and at no cost to the pupils may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.<sup>78</sup>

And the Parameters and Guidelines for 18-TC-01 require the claimants to identify “each school's total enrollment of female pupils in grades 6 to 12 in the claim year.”<sup>79</sup>

However, the mandate in this case is not limited to providing menstrual products to only female pupils. The test claim statute is intended to provide menstrual products “at all times” to all genders, including transgender men, nonbinary, and gender nonconforming students, who may also menstruate. As indicated in the Test Claim Decision, the Legislature made the following findings and declarations in the Menstrual Equity for All Act:

- 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.
- 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.
- 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.

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<sup>78</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019, <https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed on April 26, 2024), pages 25, 26.

<sup>79</sup> Exhibit X (4), Commission on State Mandates, Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01, adopted November 22, 2019, <https://csm.ca.gov/documents/DecisionandPsandGswebfinalDecisionsPage.pdf> (accessed on April 26, 2024), page 24.

- 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.
- 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 . . . .<sup>80</sup>

Thus, the mandated program will result in increased costs because additional pupils are required to have free access to menstrual products in the additional (men’s and all-gender) restrooms required to be stocked “at all times.”

Enrollment information identifying the number of transgender, nonbinary, and gender nonconforming pupils is not widely available. The Office of the Legislative Analyst estimated that less than one percent of the population aged 13 years and over identify as transgender, and that transgender and nonbinary persons generally comprise similarly small shares of pupils in the public education system:

While there is limited data on the number of transgender and nonbinary persons in California, the Williams Institute at the University of California, Los Angeles School of Law estimates about 200,000 of the state’s 33 million population aged 13 years and over (less than 1 percent) identify as transgender. Transgender and nonbinary persons generally comprise similarly small shares of students and staff in California’s public education system and people enrolled in the state’s publicly funded health programs.<sup>81</sup>

The Assembly Appropriations Committee analysis of the test claim statute compared costs for this program to those of the *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01 mandate, estimating an increase of ten percent to the total cost per pupil:

One-time Proposition 98 GF [general fund] costs of about \$2 million to LEAs [Local Education Agencies or School Districts] 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 [sic] 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

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<sup>80</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, pages 7-8 (citing to Stats. 2021, ch. 664, § 1).

<sup>81</sup> Exhibit X (6), Legislative Analyst’s Office, Letter to Attorney General Rob Bonta regarding a proposed ballot measure, November 14, 2023, <https://lao.ca.gov/ballot/2023/230519.pdf> (accessed on April 25, 2024), page 2.

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.<sup>82</sup>

And the “The Menstrual Equity for All Act; A Handbook for California Public School Districts” estimates that “50% of students at each school menstruate.”<sup>83</sup> Therefore, to support the actual cost for labor and materials claimed as a result of this mandate, the Parameters and Guidelines require the claimants to provide each school’s total enrollment of female pupils and its estimate of the total enrollment of transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 in the claim year that may use menstrual products.

Accordingly, Section IV. of the Parameters and Guidelines is revised as follows (with changes in underline and strikeout to reflect changes to the Draft Expedited Parameters and Guidelines):

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

A. Stocking an Adequate Supply of Menstrual Products Free of Cost for Pupils

1. 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),<sup>84</sup> 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

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<sup>82</sup> Exhibit A, Test Claim Decision, adopted March 22, 2024, page 8 (citing Assembly Appropriations Committee Analysis of AB 367 (2021-2022), as amended April 27, 2021, page 2). Emphasis added.

<sup>83</sup> Exhibit X (7), “The Menstrual Equity for All Act; A Handbook for California Public School Districts, January 2023”, [https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook\\_Final.pdf](https://californiahealtheducation.org/PublishingImages/Lists/TrendingTopics/AllItems/1.1.2023%20Menstrual%20Equity%20for%20All%20Act%20Handbook_Final.pdf) (accessed on April 26, 2024), page 15.

<sup>84</sup> These schools are those that are eligible for Title I, Part A funds and meet the second test identified in section 6314(a)(I)(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. See Exhibit A, Test Claim Decision, adopted March 22, 2024, page 20.

restrooms, ~~and at least~~ plus 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~~ may be claimed under *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

2. For schools that did **not** meet the 40-percent pupil poverty level subjecting them to the *Feminine Hygiene Products* mandate under prior law, to stock all women's restrooms and ~~any~~ all-gender restrooms, ~~and at least plus~~ 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.
- ~~3. 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.~~
3. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for menstrual products (defined only as tampons and sanitary napkins) in the new or additional restrooms identified in IV.A. 1 and 2 above.

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

**Reimbursement is not required to stock any products other than menstrual pads and tampons for pupils, or to stock menstrual products in more than one men's restroom per school.**

An adequate supply of menstrual products and dispensers to comply with Section IV.A.1 and 2 of these Parameters and Guidelines may be determined based on the enrollment of female, transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 that may use those products each claim year, the estimated number of products those pupils may use each claim year; and the number of restrooms now required to be stocked.

In the reimbursement claims, claimants shall identify:

- a. ~~1.~~The total number of schools in the claimant's jurisdiction that maintain any combination of classes from grades 6 through 12, inclusive.
- b. For each school identified in a. above, provide the total enrollment of female, and the estimated total enrollment of transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 in the claim year that may use the menstrual products required by the test claim statute.
- c. ~~2.~~The total number of Title 1 schools in the claimant's jurisdiction identified in ~~#1~~ a. 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).
- d. ~~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.~~ Education Code, section § 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,
  - the total number of all-gender restrooms in the school.
- e. ~~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.

#### B. Posting a Notice

1. ~~3.~~ 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.

#### **D. Claim Preparation and Submission (Section V. of the Parameters and Guidelines)**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the direct costs that are eligible for reimbursement.

No changes to the boilerplate language were proposed.

**E. Offsetting Revenues and Reimbursements (Section VII. Offsetting Revenues and Reimbursements)**

Section VII. of the Parameters and Guidelines governs offsetting revenues (i.e., funds that are not a claimant’s proceeds of taxes) required to be identified and deducted from the costs claimed.

No changes to the boilerplate language were proposed.

**F. The Remaining Sections of the Parameters and Guidelines**

Section VI. Record Retention; Section VIII. State Controller’s Claiming Instructions; Section IX. Remedies Before the Commission; and Section X. Legal and Factual Basis for the Parameters and Guidelines contain standard boilerplate language.

**V. Conclusion**

Based on the foregoing analysis, the Commission hereby adopts the Proposed Decision and Parameters and Guidelines.

**PARAMETERS AND GUIDELINES<sup>85</sup>**

Education Code Section 35292.6

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

*Public School Restrooms: Menstrual Products*

22-TC-04

Period of Reimbursement begins January 1, 2022

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**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. The Act requires public schools, 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 its Test Claim 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

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<sup>85</sup> Please note that the Decision and Parameters and Guidelines is a single document and must be read as a whole. It is not intended to be separated and should be posted in its entirety.

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:

1. 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).
2. 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.
3. 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 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:

##### **A. Stocking an Adequate Supply of Menstrual Products Free of Cost for Pupils.**



1. 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),<sup>86</sup> 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 plus~~ 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~~ may be claimed under *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01.

2. For schools that did **not** meet the 40-percent pupil poverty level subjecting them to the *Feminine Hygiene Products* mandate under prior law, to stock all women’s restrooms and ~~any~~ all-gender restrooms, ~~and at least plus~~ 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.
- ~~3. 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.~~
3. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for menstrual products (defined only as tampons and sanitary napkins) in the new or additional restrooms identified in IV.A. 1 and 2 above.

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

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<sup>86</sup> 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. Exhibit A, Test Claim Decision, adopted March 22, 2024, page 20.

**Reimbursement is not required to stock any products other than menstrual pads and tampons for pupils, or to stock menstrual products in more than one men's restroom per school.**

An adequate supply of menstrual products and dispensers to comply with Section IV.A.1 and 2 of these Parameter and Guidelines may be determined based on the enrollment of female, transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 that may use those products each claim year, the estimated number of products those pupils may use each claim year; and the number of restrooms now required to be stocked.

In the reimbursement claims, claimants shall identify:

- a. ~~1.~~The total number of schools in the claimant's jurisdiction that maintain any combination of classes from grades 6 through 12, inclusive.
- b. For each school identified in a. above, provide the total enrollment of female, and estimated total enrollment of transgender, nonbinary, and gender nonconforming pupils in grades 6 to 12 in the claim year that may use the menstrual products required by the test claim statute.
- c. ~~2.~~The total number of Title 1 schools in the claimant's jurisdiction identified in ~~#1~~ a. 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).
- d. ~~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 Education Code, section § 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,
  - the total number of all-gender restrooms in the school.
- e. ~~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.

**B. Posting a Notice.**

1. 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.

## 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 chapter<sup>87</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **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

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<sup>87</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

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.

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 May 10, 2024, I served the:

- **Current Mailing List dated May 10, 2024**
- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued May 10, 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 May 10, 2024 at Sacramento, California.



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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/10/24

**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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