



July 20, 2023

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



Response to Test Claim 22-TC-04, Public School Restrooms: Feminine Hygiene Products II

Dear Heather Halsey:

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

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

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

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

Concerns:

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

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

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

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

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

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

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

Sincerely,

Chris Ferguson

Chris Ferguson
Program Budget Manager

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On July 20, 2023, I served the:

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

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

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

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



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/10/23

Claim Number: 22-TC-04

Matter: Public School Restrooms: Feminine Hygiene Products II

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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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