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RECEIVED
August 17, 2023
**Commission on
State Mandates**

August 17, 2023

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

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

Dear Ms. Halsey:

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

A. Introduction

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

1. Commission Previously Approved Test Claim for Menstrual Products

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

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

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

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

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

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

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

3. Commission Decided Dispensers are Suitable and Reasonable

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

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

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

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

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

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

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

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

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


B. Conclusion

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

C. Certification

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

August 17, 2023


Arthur M. Palkowitz
Representative for the Claimant

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

SECTION NUMBER: 6
Heading: DECLARATION

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

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

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

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

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

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

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

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

Test Claim: Public School Restrooms:

Feminine Hygiene Products II (22-TC-04)

Claimants: Hesperia Unified School District

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Hesperia Unified School District**

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

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

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

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

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

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

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

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

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

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Increased cost of purchasing Dispensers during FY 2022-2023

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

Increased cost of dispensers. \$37,442.05

(PSR Menstrual 022; 024.)

Increased cost of installing Dispensers- Labor Cost

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

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

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

For 2022-2023 we provide the following information:

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

Prior to AB 367 we provide the following information:

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

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

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

Test Claim: Public School Restrooms:

Feminine Hygiene Products II (22-TC-04)

Claimants: Hesperia Unified School District

**Section: 6 Declaration –Dr. George Landon, Deputy Superintendent, Business Service,
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The State provides funding as a lump sum for the Mandate Block Grant and does not break down the funding for each mandate. There are approximately forty-nine mandates are included in the mandate block grant.

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

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

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

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

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

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

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

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

Test Claim: Public School Restrooms:

Feminine Hygiene Products II (22-TC-04)

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

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

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


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

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

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

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

Dated: August 17, 2023



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

Hesperia Unified School District

n

AB 10

AB 367

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On August 17, 2023, I served the:

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

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

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

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



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

Mailing List

Last Updated: 8/7/23

Claim Number: 22-TC-04

Matter: Public School Restrooms: Feminine Hygiene Products II

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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