



January 5, 2024

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

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

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

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

Dear Mr. Hill and Mr. Palkowitz:

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

Written Comments

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

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

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

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

Hearing

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

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

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

Sincerely,



Heather Halsey
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Education Code Section 35292.6

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

Public School Restrooms: Menstrual Products

22-TC-04

Hesperia Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

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

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

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

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

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

Procedural History

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

Commission Responsibilities

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

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

Claims

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Staff Analysis

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

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

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

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

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

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

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

¹⁸ Government Code section 17551(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁷ Statutes 2021, chapter 664, section 1.

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

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

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

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

Conclusion

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

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

Staff Recommendation

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

³⁰ Statutes 2021, chapter 664, section 1.

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM

Education Code section 35292.6
Statutes 2021, chapter 664, Sections 1
and 3 (AB 367), effective July 1, 2022
Filed on May 12, 2023
Hesperia Unified School District, Claimant

Case No.: 22-TC-04

*Public School Restrooms: Menstrual
Products*

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted March 22, 2024)

DECISION

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

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

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

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

Summary of the Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁸ Statutes 2021, chapter 664, section 1.

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

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

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

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

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

COMMISSION FINDINGS

I. Chronology

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

II. Background

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

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

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

⁴¹ Statutes 2021, chapter 664, section 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁶¹ Education Code section 17014(d).

⁶² Education Code section 33126.

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

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

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

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

III. Positions of the Parties

A. Hesperia Unified School District

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Department of Finance

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

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

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

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

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

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

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

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

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

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

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

IV. Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁹¹ Government Code section 17551(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The claimant also seeks reimbursement for:

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

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

¹¹² Emphasis added.

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

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

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

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

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

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

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

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

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

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

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

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

¹¹⁸ Statutes 2021, chapter 664, section 1.

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

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

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

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

V. Conclusion

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

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

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

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

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

¹²³ Government Code section 17564.

¹²⁴ Government Code section 17556(e).

¹²⁵ Government Code section 17556(d).

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

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On January 5, 2024, I served the:

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

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

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

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



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

Mailing List

Last Updated: 1/5/24

Claim Number: 22-TC-04

Matter: Public School Restrooms: Menstrual Products

Claimant: Hesperia Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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