

## **ITEM 5**

### **REVISED PROPOSED DECISION AND PARAMETERS AND GUIDELINES**

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

Desert Sands Unified School District, Claimant

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May 24, 2019

Ms. Erika Li  
Department of Finance  
915 L Street, 10th Floor  
Sacramento, CA 95814

Mr. Arthur Palkowitz  
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2488 Historic Decatur Road, Suite 200  
San Diego, CA 92106

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

**Re: Decision**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

Dear Ms. Li and Mr. Palkowitz:

On May 24, 2019, the Commission on State Mandates adopted the Decision approving the Test Claim on the above-entitled matter.

Sincerely,

Heather Halsey  
Executive Director



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

Filed on December 7, 2018

Desert Sands Unified School District,  
Claimant

Case No.: 18-TC-01

*Public School Restrooms: Feminine Hygiene  
Products*

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

*(Adopted May 24, 2019)*

*(Served May 24, 2019)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 24, 2019. Arthur Palkowitz appeared on behalf of the Desert Sands Unified School District. Susan Geanacou, appeared on behalf the Department of Finance (Finance).

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 the Proposed Decision to approve the Test Claim by a vote of 7-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Andre Rivera, Representative of the State Treasurer	Yes
Yvette Stowers, Representative of the State Controller, Vice Chairperson	Yes

## **Summary of the Findings**

This Test Claim alleges that Statutes 2017, chapter 687, which added section 35292.6 to the Education Code, effective January 1, 2018, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The test claim statute requires any public school maintaining any classes from grade 6 to grade 12, inclusive, that meets the 40 percent pupil poverty threshold required to operate a Title I, Part A schoolwide program pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code, to stock at least 50 percent of the school's restrooms with feminine hygiene products, defined as “tampons and sanitary napkins,” at all times. In addition, the test claim statute prohibits schools from charging for any menstrual products, including feminine hygiene products, provided to pupils.

This Test Claim was filed on December 7, 2018, which is within 365 days of the date the test claim statute became effective on January 1, 2018, and is therefore timely filed pursuant to Government Code section 17551 and California Code of Regulations, title 2, section 1183.1(c).<sup>1</sup>

The Commission finds that 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. This 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.

The mandated activity is new. Prior to the enactment of the test claim statute, school districts were required to ensure that every school restroom is maintained and cleaned regularly, and is fully operational and stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.<sup>2</sup> In addition, prior law requires that school restroom facilities be evaluated as to whether they meet the “good repair” standard.<sup>3</sup> Schools are also required by prior law to permit students to use facilities consistent with their gender identity, irrespective of the gender listed on the pupil’s records.<sup>4</sup> However, there is no requirement in prior law to stock 50 percent of the school's restrooms with feminine hygiene products at all times at no cost to students.

In addition, the mandated activity is uniquely imposed on public schools, as specified in the test claim statute, and provides a service to the public. According to the legislative history, the test claim statute is needed to remove a barrier to girls’ educations because “[n]ot having access to

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<sup>1</sup> Exhibit A, Test Claim, page 1.

<sup>2</sup> Education Code section 35292.5; Education Code section 17002(d)(1); Education Code section 33126(b)(8).

<sup>3</sup> Education Code section 17002(d)(1).

<sup>4</sup> Education Code section 221.5.

these vital medical necessities creates an additional barrier to a young girl's education. Young girls sometimes miss school because of a lack of access to these products.”<sup>5</sup> Public education is an essential governmental function.<sup>6</sup> Thus, the test claim statute imposes a new program or higher level of service.

Finally, based on evidence in the record, the Commission finds that the test claim statute results in increased actual costs mandated by the state within the meaning of Government Code section 17514, and that no exceptions in Government Code section 17556 apply to deny this Test Claim.

## COMMISSION FINDINGS

### I. Chronology

01/01/2018	The effective date of the test claim statute.
12/07/2018	The claimant filed the Test Claim. <sup>7</sup>
12/17/2018	Commission staff issued the Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date.
01/16/2019	The Department of Finance (Finance) filed comments on the Test Claim. <sup>8</sup>
02/15/2019	The claimant filed rebuttal comments. <sup>9</sup>
03/05/2019	Commission staff issued the Draft Proposed Decision. <sup>10</sup>
03/26/2019	The claimant filed comments on the Draft Proposed Decision. <sup>11</sup>
03/26/2019	Finance filed comments on the Draft Proposed Decision. <sup>12</sup>

### II. Background

This Test Claim addresses Statutes 2017, chapter 687, which added section 35292.6 to the Education Code. Section 35292.6 requires 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 maintains any combination of classes from grade 6 to grade 12, inclusive, and meets a 40 percent pupil poverty threshold specified in federal law for schoolwide Title I program eligibility.

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<sup>5</sup> Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 2.

<sup>6</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

<sup>7</sup> Exhibit A, Test Claim, page 1.

<sup>8</sup> Exhibit B, Finance's Comments on the Test Claim, page 1.

<sup>9</sup> Exhibit C, Claimant's Rebuttal Comments, page 1.

<sup>10</sup> Exhibit D, Draft Proposed Decision.

<sup>11</sup> Exhibit E, Claimant's Comments on the Draft Proposed Decision.

<sup>12</sup> Exhibit F, Finance's Comments on the Draft Proposed Decision.

**A. Prior Law Established Requirements for School Restroom Maintenance and Reporting, and Requires that School Restrooms Be Kept in Good Repair and Stocked at All Times with Toilet Paper, Soap, and Paper Towels or Functional Hand Dryers.**

Prior law requires school districts to keep facilities and school restrooms in good repair, and to report any needed maintenance on those facilities as follows:

*Restroom Maintenance:* Education Code section 35292.5 requires every public and private school enrolling students from kindergarten through grade 12 to ensure that restrooms are kept open during school hours, maintained and cleaned regularly, be fully operational and stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.<sup>13</sup>

*Good Repair and the Facilities Inspection System:* Education Code section 17002 defines the “Good Repair” standard for school facilities,<sup>14</sup> including school restrooms, to mean that they are 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.<sup>15</sup> The minimum evaluation criteria for the restrooms 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.<sup>16</sup> The FIT developed by the OPSC in 2007 includes the evaluation of the degree to which restrooms are maintained and cleaned regularly; are fully operational; are stocked with toilet paper, soap, and paper towels; and are open during school hours.<sup>17</sup>

*School Accountability Report Card (SARC):* 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 SARC.<sup>18</sup> “Good repair” for the purpose of SARC has the same

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<sup>13</sup> Education Code section 35292.5 was pled in *Clean School Restrooms*, 04-TC-01 and was withdrawn by the claimant on March 25, 2010.

<sup>14</sup> 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” is only clarifying the existing law. In addition, all the activities claimed in relation to school facilities programs utilizing the section 17002 good repair definition were voluntarily assumed activities.

<sup>15</sup> Education Code section 17002(d)(1).

<sup>16</sup> Education Code section 17002(d)(1)(M).

<sup>17</sup> Exhibit G, Office of Public School Construction (OPSC), Facility Inspection Tool (FIT) [https://www.documents.dgs.ca.gov/opsc/Forms/Worksheets/FIT\\_rev.pdf](https://www.documents.dgs.ca.gov/opsc/Forms/Worksheets/FIT_rev.pdf) (accessed on January 30, 2018).

<sup>18</sup> 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-

meaning as specified in Section 17002(d).<sup>19</sup> The SARCs must be prepared annually and disseminated to the public.<sup>20</sup>

*Local Control Accountability Plan (LCAP):* As a part of the new Local Control Funding Formula (LCFF),<sup>21</sup> 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,”<sup>22</sup> and requires, to the extent practicable, that the data in the LCAP be reported in a manner consistent with how information is reported on the SARC.<sup>23</sup>

*Use of Facilities Consistent with Gender Identity:* Education Code section 221.5 requires that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and to use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.

## **B. The Test Claim Statute**

Statutes 2017, Chapter 687, added section 35292.6 as follows:

- (a) A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets 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 shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.
- (b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products.
- (c) For purposes of this section, "feminine hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

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TC-06; 08-TC-01 and was partially approved by the Commission, including the activity to report any needed maintenance to ensure good repair on the SARC.

<sup>19</sup> Education Code section 17014(d).

<sup>20</sup> Education Code section 33126.

<sup>21</sup> Education Code section 42238.02. The formula 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 (EL), free and reduced-price meal eligible students and foster youth students.

<sup>22</sup> Education Code section 52060(a)-(d). The governing boards of school districts are required to adopt a three-year LCAPs, 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

<sup>23</sup> Education Code section 52060(f).

The schools required to comply with this statute in accordance with subdivision (a) are analyzed in the Discussion below.

The Senate Floor analysis, quoting the author of the bill, states:

This bill seeks to increase access to menstrual products to girls and young women who need it most by providing them for free in public schools grade 6 to grade 12 that receive Title 1 funding.<sup>24</sup>

The test claim statute is needed, according to the analysis, to remove a barrier to girls' education by providing access to feminine hygiene products, and may result, as evidenced by other jurisdictions, in increased school attendance:

Not having access to these vital medical necessities creates an additional barrier to a young girl's education. Young girls sometimes miss school because of a lack of access to these products. A pilot project to provide menstrual products for free in New York City was done last year in 25 middle schools and high schools and the schools saw a 2.4% increase in attendance. Providing tampons and pads is about equity and social justice. We provide toilet paper in the bathrooms of schools and tampons should be no different.<sup>25</sup>

The analysis further notes that access to female hygiene products is vital for health, well-being, and full participation, but is limited for vulnerable populations stating:

According to a June 20, 2016 committee report by Committee on Women's Issues for the Council of the City of New York, "... Feminine hygiene products are vital for the health, well-being and full participation of women and girls. Inadequate menstrual hygiene management is associated with both health and psycho-social issues, particularly among low-income women. It has been reported that a lack of access to feminine hygiene products can cause emotional duress, physical infection and disease, and can lead to cervical cancer. Access to feminine hygiene products has proven to be limited for vulnerable populations. Currently the cost of feminine hygiene products (FHP) are not included in health insurance or flexible spending accounts, nor in public benefits programs such as the Supplemental Nutrition Assistance Program (SNAP) or Women, Infants, and Children (WIC) benefits."<sup>26</sup>

The Assembly Floor Analysis, concurring in Senate amendments, and quoting the Senate Appropriations Committee analysis, indicates that the bill is expected to result in reimbursable state-mandated costs as follows:

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<sup>24</sup> Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, page 3.

<sup>25</sup> Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 2.

<sup>26</sup> Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 3.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- 1) *One-time state reimbursable mandated costs*, ranging from the millions to tens of millions of dollars in Proposition 98 General Fund, for the bill's requirement for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars.
- 2) *Ongoing state reimbursable mandated costs*, likely in the hundreds of thousands of dollars in Proposition 98 General Fund, to stock the dispensers at no charge.<sup>27</sup>

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

#### **A. Desert Sands Unified School District**

The claimant alleges that the test claim statute constitutes a reimbursable state-mandated program<sup>28</sup> and requires the claimant to perform the following new activities to implement the test claim statute:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products.
- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms.
- (iii) Purchasing and installing dispensers in the schools' restrooms.
- (iv) Stocking the schools' restrooms with feminine hygiene products at all times.<sup>29</sup>

The total increased costs alleged by the claimant to perform these activities for the 2017-2018 fiscal year amounted to \$61,615.72 for the cost of labor and supplies, including \$39,629.38 for stocking the schools' restrooms with feminine hygiene products at all times.<sup>30</sup> The total estimated costs alleged for the 2018-2019 fiscal year, based on the 2017-2018 costs, amounted to \$43,988.22, including the \$39,629.38 for stocking the restrooms with feminine hygiene

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<sup>27</sup> Exhibit G, Assembly Concurrence in Senate Amendments Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 1, emphasis added.

<sup>28</sup> Exhibit A, Test Claim, page 7 (Narrative).

<sup>29</sup> Exhibit A, Test Claim, page 11 (Narrative).

<sup>30</sup> Exhibit A, Test Claim, pages 11-13 (Narrative).

products.<sup>31</sup> To support its claim, the claimant filed a declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District<sup>32</sup> and invoices.<sup>33</sup>

The claimant filed rebuttal comments on February 15, 2019 in response to Finance’s argument “questioning the validity of the claimant’s ongoing labor costs claimed in the Test Claim and that the new activities implemented by the Test Claim, as it relates to labor costs, may be “absorbed into existing activities of the school district therefore not resulting in increased labor costs to that district.”<sup>34</sup> The claimant disagrees with Finance’s statement that the Test Claim asserts “a massive overhaul of school policies and procedures” and states that the claimed “labor costs are very reasonable based on the time estimated to perform the tasks.”<sup>35</sup>

On March 26, 2019, the claimant filed comments on the Draft Proposed Decision disagreeing with the recommendation that the proposed activities to update policies and procedures and to purchase and install dispensers are not mandated by the plain language of the test claim statute.<sup>36</sup> The claimant argues that “[l]egislative history acknowledges that the mandate would result in school districts incurring costs to purchase and install dispensers and the claimant has filed evidence supporting that cost.”<sup>37</sup>

## **B. Department of Finance**

Finance argues that “[e]xisting law (Education Code section 35292.5) requires all schools, with few exceptions, to maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap, and paper towels or functional hand dryers”, and, therefore, the activities related to implementation of the test claim statute may “simply be absorbed into existing activities of a school district, therefore not resulting in increased labor costs to that district.”<sup>38</sup>

Alternatively, Finance argues that, to the extent that the test claim statute establishes new responsibilities, the requirement to stock feminine hygiene products in 50 percent of certain public school’s restrooms, already maintained as required by section 35292.5 and 17002, “should not require massive overhaul of school policies and procedures, nor should it result in significant increased labor costs.”<sup>39</sup>

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<sup>31</sup> Exhibit A, Test Claim, pages 13-15 (Narrative).

<sup>32</sup> Exhibit A, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>33</sup> Exhibit A, Test Claim, pages 25-33.

<sup>34</sup> Exhibit C, Claimant’s Rebuttal Comments, page 1.

<sup>35</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 1-2.

<sup>36</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision.

<sup>37</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, page 2.

<sup>38</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.

<sup>39</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.



On March 26, 2019, Finance filed comments on the Draft Proposed Decision expressing concerns “regarding some of the costs in the Draft Proposed Decision.”<sup>40</sup> Finance argues that “certain costs, such as development and implementation of policies, and purchase and installation of dispensers, are one-time costs which should not need to be repeated in ongoing years.”<sup>41</sup> And, Finance continues to dispute the significant labor cost alleged to refill dispensers, given that the claimant “has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school.”<sup>42</sup>

#### **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.”<sup>43</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>44</sup>

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.<sup>45</sup>
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.<sup>46</sup>

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<sup>40</sup> Exhibit F, Finance’s Comments on the Draft Proposed Decision, page 1.

<sup>41</sup> Exhibit F, Finance’s Comments on the Draft Proposed Decision, page 1.

<sup>42</sup> Exhibit F, Finance’s Comments on the Draft Proposed Decision, page 1.

<sup>43</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>44</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>45</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>46</sup> *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).

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.<sup>47</sup>
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.<sup>48</sup>

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.<sup>49</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>50</sup> 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.”<sup>51</sup>

#### **A. This Test Claim Was Timely Filed.**

Government Code section 17551(c) provides that test claims “shall 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.”<sup>52</sup> Section 1183.1(c) of the Commission’s regulations, in turn, defines “12 months” as 365 days.<sup>53</sup>

The test claim statute became effective on January 1, 2018, and the Test Claim was filed on December 7, 2018, within 365 days following the effective date of the statute.<sup>54</sup> The Test Claim was therefore timely pursuant to the first prong of Government Code section 17551(c) and California Code of Regulations, title 2, section 1183.1(c).<sup>55</sup>

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<sup>47</sup> *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.

<sup>48</sup> *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.

<sup>49</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>50</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>51</sup> *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].

<sup>52</sup> Government Code section 17551(c) (Stats. 2007, ch. 329).

<sup>53</sup> California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

<sup>54</sup> Exhibit A, Test Claim, page 1.

<sup>55</sup> Based on the filing date of December 7, 2018, the potential period of reimbursement would begin July 1, 2017. (Gov. Code, § 17557(e).) However, since the test claim statute did not

**B. Education Code Section 35292.6, as Added by Statutes 2017, Chapter 687, Imposes a Reimbursable State-Mandated Program on School Districts with Specified Schools Within the Meaning of Article XIII B, Section 6 of the California Constitution.**

As described below, the Commission finds that Education Code section 35292.6, added by the test claim statute (Stats. 2017, ch. 687) imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

1. Education Code Section 35292.6 Imposes a State-Mandated Program on School Districts with Schools Maintaining Any Combination of Classes from Grade 6 to Grade 12, Inclusive, That Meet a 40 Percent Pupil Poverty Threshold Required to Operate a Schoolwide Title I Program Pursuant to Federal Law, to Stock 50 Percent of Such Schools' Restrooms with Feminine Hygiene Products at All Times at No Cost to Pupils.

The plain language of Education Code section 35292.6 requires specified schools maintaining any combination of classes from grade 6 to grade 12, to stock at all times at least 50 percent of the schools' restrooms with feminine hygiene products, defined as "tampons and sanitary napkins for use in connection with the menstrual cycle." In addition, the statute prohibits these schools from charging for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products. Section 35292.6 states the following:

- (a) A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets 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 *shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.*
- (b) A public school described in subdivision (a) *shall not charge for any menstrual products provided to pupils*, including, but not limited to, feminine hygiene products.
- (c) For purposes of this section, "feminine hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

Based on the plain language of the statute, the activity to stock 50 percent of the school's restrooms with "feminine hygiene products" (defined as tampons and sanitary napkins) at all times, is mandated by the state.<sup>56</sup> Although the statute suggests that a school can stock more than 50 percent of the restrooms with feminine hygiene products (with the language requiring schools to stock "*at least 50 percent of the school's restrooms*"), there is no mandate to do so. It is within the discretion of a school district or the school site to stock more than 50 percent of the school's restrooms with feminine hygiene products.

In addition, the test claim statute prohibits schools from charging for any "menstrual products provided to pupils, including, but not limited to, feminine hygiene products." The term

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become effective and operative until January 1, 2018, then the period of reimbursement begins January 1, 2018.

<sup>56</sup> Education Code section 75 states that "[s]hall is mandatory and 'may' is permissive."

“menstrual products” is not defined. However, the phrase “menstrual products” is broader than “feminine hygiene products” (defined as tampons and sanitary napkins), since the plain language states that “menstrual products” includes, “but is not limited to,” “feminine hygiene products.” The test claim statute only mandates that schools stock tampons and sanitary napkins. The state has not mandated schools to provide or stock any other menstrual product. Therefore, to the extent a school stocks other menstrual products, it does so at its own discretion and cost.

Moreover, the test claim statute mandates that 50 percent of the school’s restrooms be stocked with feminine hygiene products, but does not define the term “restrooms.” A “restroom” is commonly understood as “*a room or suite of rooms in a public space provided with lavatory, toilet, and other facilities . . .*”<sup>57</sup> Accordingly, no matter how many lavatories or toilets are in a room or suite of rooms, the mandate is to stock with feminine hygiene products, 50 percent of the rooms provided for that purpose at a school site. Thus, for example, if a school has two sets of restrooms, one for men or boys and one for women or girls, it would be required to stock one restroom with tampons and sanitary napkins – and that would be the one for women or girls consistent with the spirit of the law.

Finally, the test claim statute provides that only “a public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that 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” is mandated to comply with the test claim statute. Section 6314 of Title 20 of the United States Code is part of federal statutory scheme known as Title I, Part A, authorized under the Elementary and Secondary Education Act (ESEA) of 1965<sup>58</sup> and most recently reauthorized by the Every Student Succeeds Act (ESSA) of 2015,<sup>59</sup> to provide federal financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging state academic standards.<sup>60</sup> Any state desiring federal funds from Title I, Part A, is required to submit to the federal government a state plan that outlines the state’s challenging academic standards and student academic achievement standards; establishes a single, statewide accountability system that will be effective in ensuring that all LEAs and schools make adequate yearly progress to meet the state’s student academic achievement standards; and establishes statewide annual measurable objectives.<sup>61</sup> The Act also requires each state to produce an annual

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<sup>57</sup> Webster’s Third New International Dictionary, Merriam-Webster, Inc. Massachusetts 1993, page 1937.

<sup>58</sup> Public Law No. 89-10, Title I, Part A has been codified in Title 20 United State Code, Sections 6301-6339, 6571-6578.

<sup>59</sup> Public Law No. 114-95, 129 Statutes 1802 (2015).

<sup>60</sup> Exhibit G, U.S. Department of Education, Programs, Improving Basic Programs Operated by Local Educational Agencies (Title I, Part A)  
<https://www2.ed.gov/programs/titleiparta/index.html> (accessed on January 30, 2018).

<sup>61</sup> 20 United States Code, section 6311.

report card that summarizes student achievement data statewide, disaggregated by student subgroups, including low-income student subgroups.<sup>62</sup>

Local educational agencies (LEAs) allocate funds received under the federal Title I, Part A program to schools in “eligible school attendance areas” in rank order on the basis of the total number of children from low-income families in each area or school, using certain measures of poverty.<sup>63</sup> Section 6314(a)(1)(A) of Title 20 of the United States Code, which is referenced in the test claim statute, authorizes the LEA to consolidate and use federal Title I, Part A funds, together with other federal, state, and local funds, to upgrade the entire educational program of a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from such families. Federal regulations clarify that a school is eligible to operate a schoolwide program pursuant to section 6314(a)(1)(A) if it meets two requirements—(i) it is eligible to receive Title I, Part A funds, and (ii) has at least 40 percent level of poverty, ascertained with one of the two poverty tests, identified in subsections (A) and (B), as follows:

- (i) The school’s LEA determines the school serves an eligible attendance area or is a participating school under section 1113 of the ESEA; *and*
- (ii) For the initial year of the schoolwide program -
  - (A) The school serves a school attendance area in which not less than 40 percent of the children are from low-income families, *or*
  - (B) Not less than 40 percent of the children enrolled in the school are from low-income families.<sup>64</sup>

The test claim statute, however, states that it applies to a school that meets the “40 percent *pupil* poverty threshold” required to operate a schoolwide program. The phrase “40 percent *pupil* poverty threshold” is not defined in the test claim statute, and is not a phrase used in federal law. Section 6314(a)(1)(A) of Title 20 of the United States Code instead uses the phrase “*children from low-income families*” and sets out two poverty tests to see if a school that qualifies for Title I, Part A funding also meets the 40 percent threshold required to operate a schoolwide program. The first test, described in subsection (A) of the federal regulation discussed above, is that “the school serves a *school attendance area* in which not less than 40 percent of the children are from low-income families.”<sup>65</sup> This test looks at the “school attendance area,” which is the geographical area in which the children who are normally served by that school reside.<sup>66</sup> Thus,

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<sup>62</sup> 20 United State Code, section 6311.

<sup>63</sup> 20 United States Code, section 6313(c). The measures of poverty are identified in 20 United States Code, section 6313(a)(5). For an LEA with an enrollment of less than 1,000 students, the ranking and serving requirements based on poverty percentages are not applicable. 20 United States Code, section 6313(a)(5).

<sup>64</sup> 34 Code of Federal Regulations section 200.25(b)(1).

<sup>65</sup> 20 United States Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(A), emphasis added.

<sup>66</sup> 20 United States Code, section 6313(a)(2)(A).

this test looks at the income level of the families that reside in the area served by the school, regardless of whether the children from these families are actually enrolled in the school. The second test, described in subsection (B) of federal regulation discussed above, is a narrower approach, and looks at the income level of the families whose children are actually enrolled in the school. This test states that schools where “not less than 40 percent of the *children enrolled* in the school are from low-income families,” are eligible to operate a schoolwide program.<sup>67</sup>

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.

The Legislature is deemed to be aware of existing laws in effect at the time legislation is enacted<sup>68</sup> and, thus, it presumably was aware of the two poverty tests allowed by section 6314(a)(1)(A) of Title 20 of the United States Code when it enacted the test claim statute. The Legislature did not use the phrase “40 percent poverty threshold,” which would suggest that a school meeting either test identified in section 6314(a)(1)(A) (based on the income levels of the families in the school attendance area, or on the income level of the families whose children are actually enrolled in the school) is required to comply with the test claim statute.

Instead, the Legislature expressly used the word “pupil” in the phrase “40 percent *pupil* poverty threshold.” Under the rules of statutory construction, “the statutes should be construed to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous.”<sup>69</sup> Webster’s Third New International Dictionary defines “pupil” as “a child or young person in school or in the charge of a tutor or instructor: STUDENT . . . .”<sup>70</sup> Thus, the word “pupil” refers only to children enrolled in school.

Therefore, the Commission finds that the Legislature intended that a public school maintaining any combination of classes from grade 6 to grade 12, inclusive, is mandated by the state to stock 50 percent of the school’s restrooms with feminine hygiene products at all times at no cost to pupils, if the school is eligible to receive Title I, Part A funds, and not less than 40 percent of the children enrolled in the school are from low-income families.

This interpretation is consistent with the legislative history of the test claim statute, which focuses on the education of girls enrolled in school. According to the Assembly floor analysis, “this bill . . . [r]equires public schools *enrolling pupils* in grades six through twelve, inclusive,

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<sup>67</sup> 20 United State Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(B), emphasis added.

<sup>68</sup> *People v. Licas* (2007) 41 Cal.4th 362, 367, citation omitted.

<sup>69</sup> *Klein v. United States of America* (2010) 50 Cal.4th 68, 80, citation omitted.

<sup>70</sup> Webster’s Third New International Dictionary, Merriam-Webster, Inc. Massachusetts 1993, page 1844. The courts use the dictionary as a proper source to determine the usual and ordinary meaning of a word or phrase in a statute. “If there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103, citation omitted).

*that qualify to operate a schoolwide Title I program based upon a 40% pupil poverty threshold, to stock at least 50% of the school's restrooms with feminine hygiene products at all times.”*<sup>71</sup> The Senate floor analysis states that “[n]ot having access to these vital medical necessities creates an additional barrier to a young girl’s education. Young girls sometimes miss school because of a lack of access to these products,” and that as a result of a pilot project in New York City to provide menstrual products for free in schools “the schools saw a 2.4% increase in attendance.”<sup>72</sup> Thus, “[t]his bill seeks to increase access to menstrual products to girls and young women who need it most by providing them for free in public schools grade 6 to grade 12 that receive Title 1 funding.”<sup>73</sup> The Senate floor analysis also states that the costs are expected “. . . for the bill's requirement for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.”<sup>74</sup>

Accordingly, the test claim statute imposes a state-mandated program on school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive, *and* (2) 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, for such schools to:

- Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

In addition, the claimant requests reimbursement for the costs of training, updating policies and procedures, and for purchasing and installing dispensers in the schools' restrooms.<sup>75</sup> Although the legislative history of the test claim statute acknowledged that the mandate would result in school districts incurring costs to purchase and install dispensers and the claimant has filed evidence supporting that cost,<sup>76</sup> these activities and costs are not mandated by the plain language of the test claim statute. Nevertheless, these activities and costs 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

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<sup>71</sup> Exhibit G, Assembly Third Reading Analysis of AB 10 (2017-2018), as amended May 30, 2017, page 1, emphasis added.

<sup>72</sup> Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, page 2.

<sup>73</sup> Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, page 3.

<sup>74</sup> Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, page 1.

<sup>75</sup> Exhibit A, Test Claim, page 11 (Narrative, page 5).

<sup>76</sup> Exhibit G, Assembly Concurrence in Senate Amendments Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 1; Exhibit A, Test Claim, pages 21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018) and 26 (Invoice).

Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

2. Education Code Section 35292.6 Imposes a New Program or Higher Level of Service.

For the test claim statute to be subject to subvention pursuant to article XIII B, section 6 of the California Constitution, the statute must impose a new program or higher level of service. First, the mandated activity must be new when compared with the legal requirements in effect immediately before the enactment of the test claim statute.<sup>77</sup> In addition, the program must carry out of the governmental function of providing services to the public, or, be a law which, to implement a state policy, imposes unique requirements on local government that does not apply generally to all residents and entities in the state:

Looking at the language of section 6 then, it seems clear that by itself the term “higher level of service” is meaningless. It must be read in conjunction with the predecessor phrase “new program” to give it meaning. Thus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing “programs.” But the term “program” itself is not defined in article XIII B. What programs then did the electorate have in mind when section 6 was adopted? We conclude that the drafters and the electorate had in mind the commonly understood meanings of the term – *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.*<sup>78</sup>

The Court further held that “the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions *peculiar to government*, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.”<sup>79</sup>

Finance argues that the implementation of the test claim statute may “simply be absorbed into existing activities of a school district, therefore not resulting in increased labor costs to that district,” because “[e]xisting law (Education Code section 35292.5) requires all schools, with few exceptions, to maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap, and paper towels or functional hand dryers.”<sup>80</sup>

The Commission, however, finds that the activity to stock 50 percent of the school's restrooms with feminine hygiene products (defined as tampons and sanitary napkins) at all times is new. As discussed in the Background, prior state law requires schools to have restrooms open during school hours, and kept in good repair and stocked at all times with toilet paper, soap, and paper

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<sup>77</sup> *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.

<sup>78</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, emphasis added.

<sup>79</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56-57, emphasis added.

<sup>80</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.



towels or functional hand dryers.<sup>81</sup> In addition, prior law requires that school restroom facilities be evaluated as to whether they meet the “good repair” standard in accordance with the Facility Inspection Tool (FIT) created by the Office of Public School Construction (OPSC) or a local evaluation instrument that meets the same criteria,<sup>82</sup> with the findings to be annually reported on the SARCs,<sup>83</sup> and addressed in the LEAs’ LCAPs.<sup>84</sup> Schools are also required by the prior law to permit students use facilities consistent with their gender identity, irrespective of the gender listed on the pupil’s records.<sup>85</sup> No prior law, however, required schools to stock restrooms with feminine hygiene products. Thus, the requirement “to stock at least 50 percent of the school’s restrooms with feminine hygiene products at all times” at no cost to pupils, is new. Although some schools may have been stocking school restrooms with feminine hygiene products prior to the test claim statute, they were not mandated by the state to do so until after the operative date of the mandate. Government Code section 17565 states that “[i]f a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

In addition, the activity mandated by the test claim statute is unique to government and applies only to *public* schools. Moreover, it provides a peculiarly governmental service to the public. The test claim statute “seeks to increase access to menstrual products to girls and young women who need it most by providing them for free in public schools . . .” as not having access to these products “creates an additional barrier to a young girl’s education.”<sup>86</sup> Providing access to education is a core governmental function and mandatory and free public education is required by the California Constitution.<sup>87</sup>

Accordingly, the test claim statute imposes a new program or higher level of service.

3. Education Code Section 35292.6 Results in Increased Costs Mandated by the State Within the Meaning of Article XIII B, Section 6 of the California Constitution and Government Code Section 17514.

The mandated activity must also result in increased costs mandated by the state. Finance argues that the requirement to stock feminine hygiene products in 50 percent of the school restrooms, which are already maintained as required by Education Code sections 35292.5 and 17002,

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<sup>81</sup> Education Code section 17002; Education Code section 35292.5.

<sup>82</sup> Education Code section 17002(d)(1).

<sup>83</sup> Education Code section 33126

<sup>84</sup> Education Code section 52060(a)-(d).

<sup>85</sup> Education Code section 221.5.

<sup>86</sup> Exhibit G, Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 10, (2017-2018), as amended September 1, 2017, pages 2-3.

<sup>87</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172.

“should not require massive overhaul of school policies and procedures, nor should it result in significant increased labor costs.”<sup>88</sup>

Article XIII B, section 6 of the California Constitution and Government Code section 17561(a) require reimbursement for all 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 executive order that mandates a new program or higher level of service. Government Code section 17564(a) further requires that no claim shall be made nor shall any payment 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.

Here, the claimant alleges that it has incurred increased costs of \$61,615.72 to comply with the mandate in fiscal year 2017-2018. This amount includes costs for developing and implementing policies and procedures, training, purchasing and installing dispensers, purchasing sanitary napkins and tampons, and labor to stock the products.<sup>89</sup> The claimant supports these assertions with invoices<sup>90</sup> and a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District.<sup>91</sup> The claimant identifies the following actual costs incurred in fiscal year 2017-2018 to stock middle and high schools’ restrooms with feminine hygiene products:

- \$374.16 to develop and implement policies and procedures.<sup>92</sup>
- \$2,110.51 to train certificated and classified staff.<sup>93</sup>
- \$19,501.67 to purchase and install dispensers.<sup>94</sup>
- \$6,186.14 in purchase price for feminine hygiene products—pads and tampons.<sup>95</sup>

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<sup>88</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>89</sup> Exhibit A, Test Claim, pages 11-13 (Narrative).

<sup>90</sup> Exhibit A, Test Claim, pages 25-33.

<sup>91</sup> Exhibit A, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>92</sup> Exhibit A, Test Claim, pages 11 (Narrative) and 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>93</sup> Exhibit A, Test Claim, pages 11-12 (Narrative) and 21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>94</sup> Exhibit A, Test Claim, pages 12 (Narrative), 21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018), and 26 (Invoice).

<sup>95</sup> Exhibit A, Test Claim, pages 12 (Narrative), 21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018), and 27-33 (Invoices).

- \$32,387.04 in labor costs for school custodians to refill dispensers (based on \$27.54 hourly rate X 0.13 minutes per day X 180 instructional days).<sup>96</sup>
- \$1,056.20 in labor costs to order and maintain stock for feminine hygiene products (based on \$35.21 hourly rate X 30 hours).<sup>97</sup>

The total estimated costs alleged for the 2018-2019 fiscal year, based on the 2017-2018 costs, amounted to \$43,988.22, including the \$39,629.38 for stocking the restrooms with feminine hygiene products.<sup>98</sup> The claimant also asserts that the statewide cost to implement the alleged mandate is estimated at \$5,000,000.<sup>99</sup>

The claimant has not identified the number of schools in its district required to comply with the mandate or the number of restrooms in each school and Finance, in comments on the Draft Proposed Decision argues that the costs alleged are not sufficiently supported and that some of them (including the installation of dispensers) should be one time only.<sup>100</sup> However, based on the information contained on the claimant's website,<sup>101</sup> and in the publicly available SARC reports for the middle and high schools operated by the claimant, the Commission takes notice that the claimant has a number of Title I schools, serving grade 6 to grade 8 for middle schools, and grade 9 to grade 12 for high schools, that receive Title I funds and meet the 40 percent pupil poverty threshold under Section 6314(a)(1)(A) of Title 20 of the United States Code to operate Title I, Part A schoolwide programs, which are, therefore, required to perform the activity mandated by the test claim statute.<sup>102</sup> Thus, the record contains sufficient evidence that the claimant's cost to comply with the mandate in fiscal year 2017-2018 exceeded \$1,000. Whether reasonably necessary activities that have not yet been approved, since they are not required by the plain language of the statute and must be proposed for consideration in the Parameters and Guidelines, should be on-going or one-time costs is an issue for the Parameters and Guidelines.

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, for example, no law or evidence

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<sup>96</sup> Exhibit A, Test Claim, pages 13 (Narrative) and 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>97</sup> Exhibit A, Test Claim, pages 13 (Narrative) and 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>98</sup> Exhibit A, Test Claim, pages 13-15 (Narrative).

<sup>99</sup> Exhibit A, Test Claim, page 15 (Narrative).

<sup>100</sup> Exhibit F, Finance's Comments on the Draft Proposed Decision, page 1.

<sup>101</sup> Exhibit G, Desert Sands Unified School District, State and Federal Programs, <https://www.dsusd.us/SFP> (accessed on February 4, 2019), page 1 (stating that Title I funds support district's programs for five (5) middle schools, and two (2) high schools).

<sup>102</sup> Exhibit G, Indio High School 2016-17 School Accountability Report Card (SARC), published January 2018 (stating that in 2016-17, Indio High School, serving grades 9 through 12, qualified for Schoolwide Title I funding, and at the beginning of the 2016-17 the school year, the school enrolled 2024 students, including 90.8% socioeconomically disadvantaged —students qualifying for free and reduced price lunch).

in the record that additional funds have been made available for the new state-mandated activity.<sup>103</sup> In addition, school districts have no fee authority to pay the costs of the alleged mandate since the statute expressly prohibits schools from charging pupils for feminine hygiene products.<sup>104</sup>

Based on the foregoing, the Commission finds that the test claim statute results in increased actual costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

## **V. Conclusion**

Accordingly, the Commission approves this Test Claim and finds that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018 on school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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, for such schools to:

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed for inclusion in the Parameters and Guidelines pursuant to Government Code section 17557(a), and California Code of Regulations, title 2, sections 1183.7(d) and 1187.5.

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<sup>103</sup> Government Code section 17556(e).

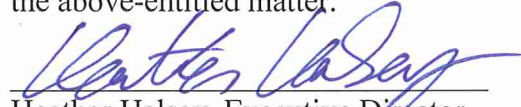
<sup>104</sup> Government Code section 17556(d).



RE: **Decision**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

On May 24, 2019, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.

  
\_\_\_\_\_  
Heather Halsey, Executive Director

Dated: May 24, 2019

### DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On May 24, 2019, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued May 24, 2019**
- **Decision adopted May 24, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 24, 2019 at Sacramento, California.

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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/24/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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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STATE of CALIFORNIA  
**COMMISSION ON STATE  
MANDATES**



May 24, 2019

Mr. Arthur Palkowitz  
 Artiano Shinoff  
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 San Diego, CA 92106

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

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

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

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
 Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
 Desert Sands Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Decision approving the Test Claim on the above-entitled matter.

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

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

### **Draft Expedited Parameters and Guidelines**

Pursuant to California Code of Regulations, title 2, section 1183.9, Commission staff has expedited the parameters and guidelines process by preparing Draft Expedited Parameters and Guidelines to assist the claimant. The proposed reimbursable activities have been limited to those approved in the Decision by the Commission. Reasonably necessary activities to perform the mandated activities may be proposed by the parties. (Cal. Code Regs., tit. 2, §1183.7(d).) "Reasonably necessary activities" are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program (Cal. Code Regs., tit. 2, §1183.7(d).) Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of the Commission's regulations.

### Review of Draft Expedited Parameters and Guidelines

Proposed modifications and comments may be filed on the Draft Expedited Parameters and Guidelines by **June 14, 2019**. (Cal. Code Regs., tit. 2, §1183.9(b).) 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

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may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

#### Rebuttals

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

#### **Draft Proposed Decision and Parameters and Guidelines**

After review of the Draft Expedited Parameters and Guidelines, all comments, and all rebuttals, Commission staff will prepare a Draft Proposed Decision and Parameters and Guidelines which will be issued for comment.

#### **Alternative Process: Reasonable Reimbursement Methodology and Statewide Estimate of Costs**

##### Test Claimant and Department of Finance Submission of Letter of Intent

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

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

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

##### Review of Proposed Reasonable Reimbursement Methodology and Statewide Estimate of Costs

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

##### Adoption of Reasonable Reimbursement Methodology and Statewide Estimate of Costs

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

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

Mr. Palkowitz and Ms. Sidarous

May 24, 2019

Page 3

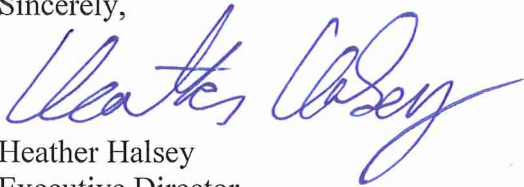
You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <https://www.csm.ca.gov/dropbox.php> on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

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

### **Hearing**

The Proposed Decision and Parameters and Guidelines for this matter are tentatively set for hearing on **Friday, September 27, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California.

Sincerely,



Heather Halsey  
Executive Director

## **DRAFT EXPEDITED PARAMETERS AND GUIDELINES**

Education Code Section 35292.6, Statutes 2017, Chapter 687 (AB 10)

### *Public School Restrooms: Feminine Hygiene Products*

18-TC-01

Reimbursement for this program begins January 1, 2018.

#### **I. SUMMARY OF THE MANDATE**

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that meet specified criteria to stock 50 percent of such schools' restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

#### **II. ELIGIBLE CLAIMANTS**

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district's schools that meet the following criteria:

- 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. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

#### **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687 became effective on January 1, 2018, establishing the period of reimbursement beginning January 1, 2018.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.



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

#### **IV. REIMBURSABLE ACTIVITIES**

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

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

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

For each eligible claimant that incurs increased costs, the following activity is reimbursable for the district’s schools that meet the criteria described above:

1. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

***Reimbursement is not required to stock more than 50 percent of the school’s restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).***

#### **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must



be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

#### A. Direct Cost Reporting

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

##### 1. Salaries and Benefits

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

##### 2. Materials and Supplies

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

##### 3. Contracted Services

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

##### 4. Fixed Assets

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

#### B. Indirect Cost Rates

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

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central

governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

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

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

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

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

## **IX. REMEDIES BEFORE THE COMMISSION**

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

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<sup>1</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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

### DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On May 24, 2019, I served the:

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued May 24, 2019**
- **Decision adopted May 24, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 24, 2019 at Sacramento, California.

  
\_\_\_\_\_  
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Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/24/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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# Reynolds Consulting Group, Inc.

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June 11, 2019

**VIA CSM DROP BOX**

<https://www.csm.ca.gov/dropbox.php>

Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, California 95814

**RECEIVED**  
June 11, 2019  
**Commission on  
State Mandates**

**Re: (Revised 6/11/19) Response to Test Claim 18-TC-01, Public School Restrooms:  
Feminine Hygiene Product**

To Whom it May Concern:

The following comments should be addressed related to the reimbursable activities within the Parameter and Guidelines for the mandate mentioned above:

- The use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward.
- The cost of the feminine hygiene dispensers as well as any repairs/replacements of dispensers from January 1, 2018, and forward.
- Stock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

Sincerely,



Sandra Reynolds MSP, President  
Reynolds Consulting Group, Inc.

## 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.

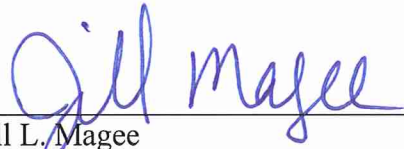
On June 11, 2019, I served the:

- **Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines filed June 11, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 June 11, 2019 at Sacramento, California.



Jill L. Magee  
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**Last Updated:** 6/11/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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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June 13, 2019

**VIA CSM DROP BOX**

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***Re: Response to Draft Proposed Parameters & Guidelines Decision 18-TC-01,  
Public School Restrooms: Feminine Hygiene Products***

Dear Ms. Halsey:

Please be advised the following is in response to the *Draft Expedited Parameters & Guidelines* ("Parameters & Guidelines") dated May 24, 2019 regarding the aforementioned Test Claim.

Commission adopted the Test Claim decision that 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 the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. This mandate applies to those schools that meet the following criteria:

- 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.

However, Commission Staff Drafted Parameters & Guidelines has rejected the Test Claim requesting reimbursement of the new activities that included costs and labor related to the purchase and installation of dispensers as well as school policies and procedures. Section 35292.6 states the following:

Heather Halsey  
Executive Director  
Commission on State Mandates

June 13, 2019  
Page 2

**Re: Response to Draft Expedited Proposed Parameters & Guidelines Decision 18-TC-01,  
Public School Restrooms: Feminine Hygiene Products**

- (a) A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets 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 *shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.* (DPD 18)

Legislative history acknowledges that the mandate would result in school districts incurring costs to purchase and install dispensers and the claimant has filed evidence supporting that cost. Commission staff has ignored the Commission members and legislative intent in recommending that these activities and costs are not reimbursable. (DPD p. 6) Nor does the DPD decision state any method or means for students to access the feminine hygiene products that are to be stocked at all times.

Desert Sands Unified School District (“Claimant”) contends that the legislative intended to reimburse for time and costs pertaining to the installation of dispensers. serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. *“The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars.* (emphasis added; Assembly Analysis September 6, 2017) The precise cost can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars. (Senate Rules Committee; September 1, 2017)

Installing dispensers is a reasonable, healthy, safe and effective method to satisfy the statute’s requirement “to stock at least 50 percent of the school’s restrooms with feminine hygiene products at all times.” (Education Code Section 35292.6.)

Claimant requests the Parameters & Guidelines be amended as follows:

1. Stock (***employee time and cost of materials***) 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.) Reimbursement is not required to stock more than 50 percent of the school’s restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).
2. ***Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.***

Artiano Shinoff

Heather Halsey  
Executive Director  
Commission on State Mandates

June 13, 2019  
Page 3

***Re: Response to Draft Expedited Proposed Parameters & Guidelines Decision 18-TC-01,  
Public School Restrooms: Feminine Hygiene Products***

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 information and belief.



Arthur M. Palkowitz  
Attorney for Claimant  
Desert Sands Unified School District

AMP:kaf

## 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.

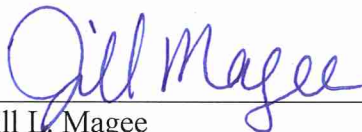
On June 17, 2019, I served the:

- **Claimant's Comments on the Draft Expedited Parameters and Guidelines filed June 14, 2019**
- **Controller's Comments on the Draft Expedited Parameters and Guidelines filed June 14, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 June 17, 2019 at Sacramento, California.



---

Jill L. Magee  
Commission on State Mandates  
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(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 6/11/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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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**RECEIVED**  
June 14, 2019  
**Commission on  
State Mandates**

**BETTY T. YEE**  
**California State Controller**

June 14, 2019

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

**SUBJECT: Draft Expedited Parameters and Guidelines, Schedule for Comments, and  
Notice of Hearing**

*Public School Restrooms: Feminine Hygiene Products, 18-TC-01*  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

Dear Ms. Halsey:

The State Controller's Office reviewed the Draft Expedited Parameters and Guidelines for the Public School Restrooms: Feminine Hygiene Products program and recommends no changes.

If you have any questions, please contact Lacey Baysinger of the Local Reimbursements Section in the Local Government Programs and Services Division, at [LBaysinger@sco.ca.gov](mailto:LBaysinger@sco.ca.gov) or (916) 324-7876

Sincerely,

A handwritten signature in blue ink, appearing to read "Gwendolyn Carlos".

GWENDOLYN CARLOS, Supervisor  
Local Reimbursements Section

**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.

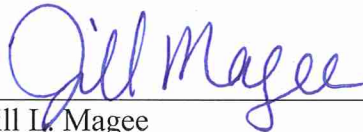
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Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

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 June 17, 2019 at Sacramento, California.



---

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# COMMISSION ON STATE MANDATES

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**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

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GAVIN NEWSOM - GOVERNOR

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June 14, 2019

**RECEIVED**

June 18, 2019

**Commission on  
State Mandates****LATE FILING**

Ms. Heather Halsey  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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Comments to Parameters and Guidelines: Public School Restrooms: Feminine Hygiene Products, 18-TC-01

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the Draft Expedited Parameters and Guidelines (Ps & Gs) prepared by the Commission on State Mandates (Commission) on May 24, 2019, and respectfully submits the following comments and concerns in response to the draft parameters and guidelines.

According to the Commissions draft Ps & Gs, the claimant is only allowed to claim and be reimbursed for increased costs for the following reimbursable activity:

1. Stock 50 percent of the school's pupil's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupil.

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed for inclusion in the Ps & Gs pursuant to current law.

Contrary to the assertion made by the claimant's attorney in the *Response to Test Claim 18-TC-01, Public School Restrooms: Feminine Hygiene Products*, dated February 15, 2019, Finance only supports the cost of the feminine hygiene products as reimbursable costs, based on the plain language of the test claim statute. All other activities such as the cost and installation of dispensers, training of personnel, and developing policies and procedures must be supported by evidence showing that they are "reasonably necessary for the performance of the state-mandated program".

For instance, as noted by the Commission in the Draft Ps & Gs, the activities and costs incurred by the school district to purchase and install dispensers are "not mandated by the plain language of the test claim statute". Furthermore, based on the plain language of the test claim statute, Finance continues to maintain that training of personnel and the development of policies are not reasonably necessary to implement the mandate.

Additionally, as noted in the Draft Ps & Gs, only actual costs—those incurred to implement the mandated activity—are eligible for mandated cost reimbursement. Actual costs must be

traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.

We continue to dispute the cost estimate submitted by the claimant and note the following additional concerns:

- As stated in the Senate Floor analysis, and emphasized in the Commission's decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.
- The claimant purchased 115 dispensers for seven eligible schools and purchased an additional 12 in the second year of the mandate. To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states "50 percent of the school's restrooms" shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.

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



JEFF BELL  
Program Budget Manager

### DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

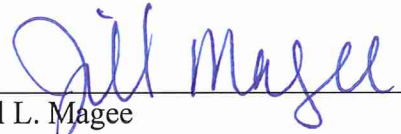
On June 18, 2019, I served the:

- **Finance's Late Comments on the Draft Expedited Parameters and Guidelines filed June 18, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 June 18, 2019 at Sacramento, California.



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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 6/11/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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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**RECEIVED**  
**June 19, 2019**  
**Commission on**  
**State Mandates**

June 19, 2019

**VIA CSM DROP BOX**

<https://www.csm.ca.gov/dropbox.php>

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, California 95814

***Re: Objections to Comments to Draft Proposed Parameters & Guidelines Decision  
18-TC-01, Public School Restrooms: Feminine Hygiene Products***

Dear Ms. Halsey:

Please be advised the following objections are in response to comments filed by Department of Finance and received June 18, 2019 regarding the *Draft Expedited Parameters & Guidelines* ("Parameters & Guidelines") Decision 18-TC-01 and comments filed by State Controller Department of Finance dated June 14, 2019 regarding the Draft Expedited Parameters & Guidelines ("Parameters & Guidelines") Decision 18-TC-01.

Comments filed by Department of Finance and received June 18, 2019 regarding the Draft Expedited Parameters & Guidelines ("Parameters & Guidelines") Decision 18-TC-01 are untimely (Cal. Code Regs., tit. 2, §1183.9(b) and are not signed under penalty of perjury. (Cal. Code Regs., tit. 2, §1187.5.) Comments filed by State Controller Department of Finance dated June 14, 2019 regarding the Draft Expedited Parameters & Guidelines ("Parameters & Guidelines") Decision 18-TC-01 are not signed under penalty of perjury. (Cal. Code Regs., tit. 2, §1187.5.)

Based on the aforementioned comments failure to comply with the applicable legal requirements they must be stricken from the record.

Artiano Shinoff

Heather Halsey  
Executive Director  
Commission on State Mandates

June 19, 2019  
Page 2

***Re: Objections to Comments to Draft Expedited Proposed Parameters & Guidelines  
Decision 18-TC-01, Public School Restrooms: Feminine Hygiene Products***

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 information and belief.



Arthur M. Palkowitz  
Attorney for Claimant  
Desert Sands Unified School District

AMP:kaf

### 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.

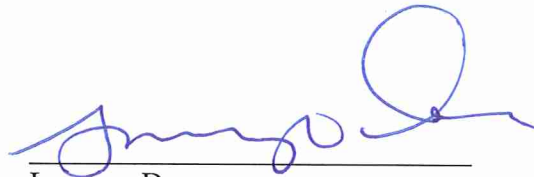
On June 25, 2019, I served the:

- **Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines filed June 25, 2019**
- **Claimant's Rebuttal Comments filed June 19, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 June 25, 2019 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
980 Ninth Street, Suite 300  
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(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 6/11/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

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June 25, 2019  
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LATE FILING  
Exhibit H

GAVIN NEWSOM - GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

June 24, 2019

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

Re: Revised Comments to Parameters and Guidelines: Public School Restrooms: Feminine Hygiene Products, 18-TC-01

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the Draft Expedited Parameters and Guidelines (Ps & Gs) prepared by the Commission on State Mandates (Commission) on May 24, 2019, and respectfully submits the following revised comments and concerns in response to the draft parameters and guidelines.

According to the Commissions draft Ps & Gs, the claimant is only allowed to claim and be reimbursed for increased costs for the following reimbursable activity:

1. Stock 50 percent of the school's pupil's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupil.

All other activities and costs alleged in the Test Claim are not mandated by the plain language of the test claim statute, but may be proposed for inclusion in the Ps & Gs pursuant to current law.

Contrary to the assertion made by the claimant's attorney in the *Response to Test Claim 18-TC-01, Public School Restrooms: Feminine Hygiene Products*, dated February 15, 2019, Finance only supports the cost of the feminine hygiene products as reimbursable costs, based on the plain language of the test claim statute. All other activities such as the cost and installation of dispensers, training of personnel, and developing policies and procedures must be supported by evidence showing that they are "reasonably necessary for the performance of the state-mandated program".

For instance, as noted by the Commission in the Draft Ps & Gs, the activities and costs incurred by the school district to purchase and install dispensers are "not mandated by the plain language of the test claim statute". Furthermore, based on the plain language of the test claim statute, Finance continues to maintain that training of personnel and the development of policies are not reasonably necessary to implement the mandate.

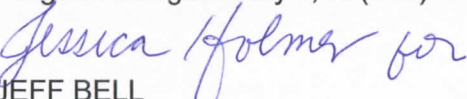
Additionally, as noted in the Draft Ps & Gs, only actual costs—those incurred to implement the mandated activity—are eligible for mandated cost reimbursement. Actual costs must be

traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.

We continue to dispute the cost estimate submitted by the claimant and note the following additional concerns:

- As stated in the Senate Floor analysis, and emphasized in the Commission's decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.
- The claimant purchased 115 dispensers for seven eligible schools and purchased an additional 12 in the second year of the mandate. To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states "50 percent of the school's restrooms" shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.

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

  
JEFF BELL  
Program Budget Manager

Attachment

**Revised Comments to Draft Expedited Parameters and Guidelines  
Department of Finance  
Public School Restrooms: Feminine Hygiene Products  
Declaration**

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DECLARATION OF JESSICA HOLMES  
DEPARTMENT OF FINANCE  
CLAIM NO. 18-TC-01

I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

6-24-19

at Sacramento, CA

Jessica Holmes  
Jessica Holmes

### 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.

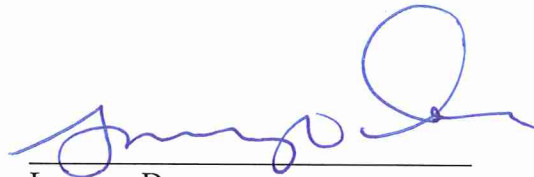
On June 25, 2019, I served the:

- **Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines filed June 25, 2019**
- **Claimant's Rebuttal Comments filed June 19, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 June 25, 2019 at Sacramento, California.



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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 6/11/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

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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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**RECEIVED**  
**June 26, 2019**  
**Commission on**  
**State Mandates**

June 25, 2019

**VIA CSM DROP BOX**

<https://www.csm.ca.gov/dropbox.php>

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, California 95814

**Re: *Objections to Finance Comments to Draft Proposed Parameters & Guidelines  
Decision 18-TC-01, Public School Restrooms: Feminine Hygiene Products***

Dear Ms. Halsey:

Please be advised the following objections are in response to comments filed by Department of Finance and received June 25, 2019 regarding the *Draft Expedited Parameters & Guidelines* ("Parameters & Guidelines") Decision 18-TC-01.

Comments filed by Department of Finance and received June 25, 2019 regarding the Draft Expedited Parameters & Guidelines ("Parameters & Guidelines") Decision 18-TC-01 are untimely (Cal. Code Regs., tit. 2, §1183.9(b) and are not signed under penalty of perjury. (Cal Code Regs., tit. 2, §1187.5.) Based on the aforementioned comments failure to comply with the applicable legal requirements the comments must be stricken from the record.

**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 information and belief.

Arthur M. Palkowitz  
Attorney for Claimant  
Desert Sands Unified School District

AMP:kaf

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

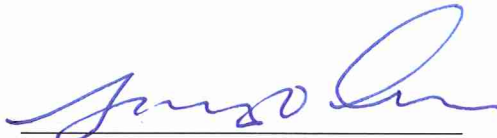
On July 9, 2019, I served the:

- **Claimant's Rebuttal Comments filed June 26, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 9, 2019 at Sacramento, California.



Lorenzo Duran  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 6/26/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

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STATE of CALIFORNIA  
**COMMISSION ON STATE  
MANDATES**



July 17, 2019

Mr. Arthur Palkowitz  
 Artiano Shinoff  
 2488 Historic Decatur Road, Suite 200  
 San Diego, CA 92106

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

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

**Re: Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing**  
*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
 Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
 Desert Sands Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

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

**Written Comments**

Written comments may be filed on the Draft Proposed Decision and Proposed Parameters and Guidelines by **August 7, 2019**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

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.

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

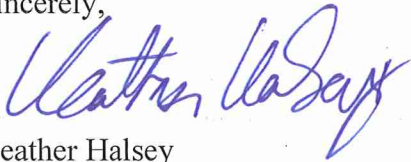
### Hearing

This matter is set for hearing on **Friday, September 27, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about September 13, 2019.

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. Staff will no longer be sending reminder emails. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately 2 weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

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 \_**

**DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES**

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

The period of reimbursement begins January 1, 2018.

Desert Sands Unified School District, Claimant

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**EXECUTIVE SUMMARY**

**I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (AB 10), which requires certain Title I-eligible public schools that maintain any combination of classes from grade 6 to grade 12, inclusive, to stock at all times and at no cost to pupils at least 50 percent of the school's restrooms with feminine hygiene products, which are defined as tampons and sanitary napkins.

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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, for such schools to:

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

## **II. Procedural History**

On May 24, 2019, the Commission adopted the Decision approving the Test Claim.<sup>1</sup> On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>2</sup> On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)<sup>3</sup> filed substantive comments on the Draft Expedited Parameters and Guidelines.<sup>4</sup> On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>5</sup> On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.<sup>6</sup> On June 18, 2019, the Department of Finance (Finance) filed late substantive comments on the Draft Expedited Parameters and Guidelines.<sup>7</sup> On June 19, 2019, the claimant filed rebuttal comments.<sup>8</sup> On June 25, 2019, Finance filed revised late comments on the Draft Expedited Parameters and Guidelines to replace the June 19 comments which were inadvertently filed without being certified and signed under penalty of perjury.<sup>9</sup> On June 26, 2019, the claimant filed rebuttal comments.<sup>10</sup> On July 17, 2019, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.<sup>11</sup>

## **III. Discussion**

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

Commission staff proposes to clarify Section II. of the Parameters and Guidelines addressing "Eligible Claimants" as follows:

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs

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<sup>1</sup> Exhibit A, Test Claim Decision.

<sup>2</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>3</sup> California Code of Regulations, title 2, section 1181.2(j) defines "Interested person" as "any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter."

<sup>4</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

<sup>5</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>6</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>7</sup> Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>8</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>9</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>10</sup> Exhibit I, Claimant's Rebuttal Comments.

<sup>11</sup> Exhibit J, Draft Proposed Decision and Proposed Parameters and Guidelines.

incurred as a result of this mandate for the district's schools that meet the following criteria:

- 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:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

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

Because the test claim statute, Statutes 2017, chapter 687, became effective on January 1, 2018, the period of reimbursement begins January 1, 2018.

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

1. Requests limiting the restrooms required to be stocked with feminine hygiene products to “pupil” restrooms or to “girl’s” restrooms are inconsistent with the test claim statute and are, therefore, denied.

For the approved activity to stock 50 percent of school's restrooms with feminine hygiene products, Finance requests that the activity be limited to “pupil” restrooms.<sup>12</sup> Interested person, Reynolds Consulting Group, Inc., also urges the Commission to state the reimbursable activity as “[s]tock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.”<sup>13</sup>

These requests are not consistent with the test claim statute, and are denied.

2. Section IV. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity and the number of restrooms in each of these schools in order to support the actual costs incurred for labor and materials.

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<sup>12</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>13</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

For the approved activity to stock 50 percent of school's restrooms with feminine hygiene products, the claimant proposes to add in Section IV. of the Parameters and Guidelines specific language that employee time and cost of materials is reimbursable.<sup>14</sup>

The "boilerplate" language in Section V. of the Parameters and Guidelines for direct cost reporting already authorizes reimbursement for the actual costs of employee time and materials for the approved reimbursable activity.<sup>15</sup> Thus, the claimant's proposal to add the same information in Section IV. of the Parameters and Guidelines is not necessary.

During the test claim proceedings, and again in comments on the Draft Expedited Parameters and Guidelines, Finance has argued that "the Claimant has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school,"<sup>16</sup> and that "the required costs may be overstated in the test claim."<sup>17</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable.<sup>18</sup>

Staff agrees that to support the actual labor and materials costs incurred as a result of this mandate, eligible claimants must identify the schools required to implement the mandated activity and the number of restrooms in each of these schools in order to show the relationship between the reimbursable activity and the costs claimed. The identification of the schools in the reimbursement claim will make it easy to access information to determine whether those schools meet the two conditions of eligibility for this program and how many pupils are enrolled in the school, which can provide valuable information about the reasonableness of the costs claims. Therefore, Section IV. of the Parameters and Guidelines is revised to reflect this clarification as follows:

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity and the number of restrooms in each of these schools.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

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<sup>14</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>15</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>16</sup> Exhibit X, Finance's Comments on the Draft Proposed Decision, page 1; Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>17</sup> Exhibit X, Finance's Comments on the Test Claim, page 2.

<sup>18</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

3. The request by interested person, Reynold’s Consulting Group, Inc., to allow a time study to support the labor costs claimed is denied because, although the Commission is authorized to adopt a reasonable reimbursement methodology (RRM), the Government Code does not authorize the Commission to approve the use of a time study for claiming actual costs.

Interested person, Reynolds Consulting Group, Inc., requests “[t]he use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward.”<sup>19</sup>

Although the Controller has allowed time studies in limited circumstances under the Controller’s audit authority,<sup>20</sup> the Government Code does not provide the Commission any authority to authorize reimbursement for actual costs based on a time study and, thus, the request is denied. The Government Code only provides two methods of reimbursement: actual cost claiming, and claiming based on a proposed reasonable reimbursement methodology (RRM).<sup>21</sup> An RRM can be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.<sup>22</sup> The Commission, however, is not authorized to develop an RRM,<sup>23</sup> and the parties have not filed a request to adopt an RRM in this case.

4. The proposed activities to purchase and install dispensers for feminine hygiene products are not supported by substantial evidence in the record explaining why the activities are reasonably necessary to comply with the mandate and are, therefore, denied.

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity.<sup>24</sup> Here, the claimant has asserted and provided evidence of costs and pointed to legislative intent in legislative analyses, but has not provided any evidence to show why reimbursement for the cost of dispensers and any repairs/replacements of dispensers is necessary for the performance of the state-mandated activity.

The claimant requests that the Commission approve “purchasing and installation of dispensers” as reasonably necessary to comply with the mandate.<sup>25</sup> Interested person, Reynolds Consulting

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<sup>19</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>20</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>21</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>22</sup> Government Code, section 17518.5.

<sup>23</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

<sup>24</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>25</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost of dispensers and any repairs/replacements of dispensers.<sup>26</sup>

Although the claimant has asserted costs and provided evidence of costs and pointed to legislative analyses to show legislative intent, neither the claimant or the interested person have provided any evidence explaining why the proposed activities of purchasing and installing dispensers are reasonably necessary to comply with the mandate and, thus, the requests are denied.

5. The proposed activity to develop policies and procedures is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

Any proposed reasonably necessary activity must be supported by substantial evidence in the record showing that proposed activity is necessary for the performance of the state-mandated activity.<sup>27</sup> The claimant's Test Claim included a request for reimbursement to develop a school's policies and procedures, which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>28</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objected to the exclusion of costs for development of a school's policies and procedures but again did not file any evidence to show why the proposed activity is necessary for the performance of the state-mandated activity.<sup>29</sup>

This activity is denied because the claimant has not provided substantial evidence in the record to support a finding that developing policies and procedures is reasonably necessary to comply with the mandate.

#### **D. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, and contracted services. However, fixed assets are not included in the Parameters and Guidelines because purchasing and installing dispensers are not mandated by the test claim statute and there is no evidence that these activities are reasonably necessary to comply with the mandate. Moreover, the claimant has identified no other fixed assets required to comply with the mandate. In addition, travel and training costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activity or submit substantial evidence to support such a request.

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<sup>26</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>27</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>28</sup> Exhibit X, Test Claim, pages 11, 21. See also Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>29</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.



The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

**IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning January 1, 2018.

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

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

The period of reimbursement begins  
January 1, 2018.

Case No.: 18-TC-01

*Public School Restrooms: Feminine Hygiene  
Products*

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

*(Adopted September 27, 2019)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on September 27, 2019. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified/rejected] the Decision and Parameters and Guidelines by a vote of [vote count will be in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez , Representative of the State Controller, Vice Chairperson	

## **I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (AB 10), which requires certain Title I-eligible public schools that maintain any combination of classes from grade 6 to grade 12, inclusive, to stock at all times and at no cost to pupils at least 50 percent of the school's restrooms with feminine hygiene products, which are defined as tampons and sanitary napkins.

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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, for such schools to:

- Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

## **II. Procedural History**

On May 24, 2019, the Commission adopted the Test Claim Decision.<sup>30</sup> On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>31</sup> On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)<sup>32</sup> filed comments on the Draft Expedited Parameters and Guidelines.<sup>33</sup> On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>34</sup> On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.<sup>35</sup> On June 18, 2019, the Department of Finance (Finance) filed late comments on the Draft Expedited Parameters and Guidelines.<sup>36</sup> On June 19, 2019, the claimant filed rebuttal

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<sup>30</sup> Exhibit A, Test Claim Decision.

<sup>31</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>32</sup> California Code of Regulations, title 2, section 1181.2(j) defines "Interested person" as "any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter."

<sup>33</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

<sup>34</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>35</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>36</sup> Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

comments.<sup>37</sup> On June 25, 2019, Finance filed revised late comments on the Draft Expedited Parameters and Guidelines to replace the June 19 comments which were inadvertently filed without being certified and signed under penalty of perjury.<sup>38</sup> On June 26, 2019, the claimant filed rebuttal comments.<sup>39</sup> On July 17, 2019, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.<sup>40</sup>

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

#### **A. Desert Sands Unified School District**

The claimant's comments on the Draft Expedited Parameters and Guidelines propose several changes to the Proposed Parameters and Guidelines which include reimbursement for purchasing and installing dispensers, and for developing policies and procedures.<sup>41</sup>

The claimant proposes the following amendments to Section IV. of the Proposed Parameters and Guidelines describing reimbursable activities (with amendments in bold italics):

1. Stock (***employee time and cost of materials***) 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.) Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>42</sup>
2. ***Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.***<sup>43</sup>

The claimant's proposed language does not address the claimant's request for reimbursement to develop policies and procedures referred to on page 1 of its comments.<sup>44</sup>

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<sup>37</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>38</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>39</sup> Exhibit I, Claimant's Rebuttal Comments.

<sup>40</sup> Exhibit J, Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>41</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>42</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>43</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>44</sup> In addition, the claimant's comments and rebuttal comments on the Draft Expedited Parameters and Guidelines do not request reimbursement for training, which was requested in the Test Claim. (Exhibit X, Test Claim, pages 11-12.) The Commission's Test Claim Decision notes that "training" may be proposed for inclusion in the Parameters and Guidelines if it is supported by evidence in the record showing it is "reasonably necessary for the performance of the state-mandated program" in accordance with Government Code section 17557(a), and

On June 19, 2019, the claimant filed rebuttal comments objecting to comments filed by Finance as untimely and not signed under penalty of perjury and to comments filed by the Controller as not signed under penalty of perjury.<sup>45</sup> The claimant requests that the comments be stricken from the record.<sup>46</sup> On June 26, 2019, the claimant filed rebuttal comments objecting to Finance's revised late comments as untimely and not signed under penalty of perjury and requesting that these comments be stricken from the record.<sup>47</sup>

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

On June 14, 2019, the Controller submitted comments on the Draft Expedited Parameters and Guidelines and recommends "no changes."<sup>48</sup>

## **C. Department of Finance**

Finance filed late comments on the Draft Expedited Parameters and Guidelines expressing several concerns and proposing a change.<sup>49</sup>

First, Finance states that it "only supports the cost of the feminine hygiene products as reimbursable costs, based on the plain language of the test claim statute" and that "[a]ll other activities, such as the cost and installation of dispensers, training of personnel, and developing

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California Code of Regulations, title 2, sections 1183.7(d) and 1187.5. (Exhibit A, Test Claim Decision, pages 15-16.)

<sup>45</sup> Exhibit G, Claimant's Rebuttal Comments, page 1.

<sup>46</sup> Exhibit G, Claimant's Rebuttal Comments, page 1.

<sup>47</sup> Exhibit I, Claimant's Rebuttal Comments. Finance's comments and revised comments were not filed within 21 days of service of the Draft Expedited Parameters and Guidelines as required and were, therefore, late. (Cal. Code Regs., tit. 2, 1183.9(b).) However, written comments received at least 15 days in advance of the meeting [i.e. late filings], shall be included in the Commission's meeting binders. (Cal. Code Regs., tit. 2, § 1181.10.) Several claimants have asserted, in a number of matters, that late comments should not be considered in Commission decisions as is permitted by the Commission's regulations (See Cal. Code Regs., tit. 2, §§ 1183.6(d), 1183.13(c), 1183.17(k), 1184.1(k), 1185.7(e), 1190.5(a)(3)(A)), but given that late filings, up to 15 days before the hearing, shall be included in the Commission's meeting binders, that the same testimony may be submitted at the hearing, and that this Draft Proposed Decision had not yet been issued at the time that the late comments were filed, staff is including these comments in the analysis to ease the decision making process for the Commission Members. Furthermore, contrary to the claimant's assertion, Finance's revised comments were signed under penalty of perjury. (See Exhibit H, page 3.) As to the Controller's comments, they were not signed under penalty of perjury, as required, but also do not contain any substance other than the Controller's agreement with the Draft Expedited Parameters and Guidelines. The claimant is correct, however, that if assertions of fact are made which are not supported by evidence in the record, they will not be considered. (Cal. Code Regs., tit. 2, §§ 1183.7, 1187.5.).

<sup>48</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>49</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

policies and procedures, must be supported by evidence showing that they are ‘reasonably necessary for the performance of the state-mandated program.’”<sup>50</sup> Finance reiterates its position that, based on the plain language of the test claim statute, the activities of training personnel and developing policies and procedures are not reasonably necessary to implement the mandate.<sup>51</sup> Finance further states that only actual costs for the state-mandated activity, that are traceable and supported by source documents that show the validity of the costs, are eligible for reimbursement.<sup>52</sup>

Finally, Finance continues to dispute the cost estimates submitted by the claimant with the Test Claim and notes the following additional concerns:

- As stated in the Senate Floor analysis, and emphasized in the Commission’s decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.
- The claimant purchased 115 dispensers for seven eligible schools and purchased an additional 12 in the second year of the mandate. To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states "50 percent of the school's restrooms" shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.<sup>53</sup>

#### **D. Interested Person, Reynolds Consulting Group, Inc.**

In its comments on the Draft Expedited Parameters and Guidelines, the Reynolds Consulting Group, Inc., recommends that the Commission address the following issues in relation to the reimbursable activities:

- The use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward.
- The cost of the feminine hygiene dispensers as well as any repairs/replacements of dispensers from January 1, 2018, and forward.

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<sup>50</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>51</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>52</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>53</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

- Stock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.<sup>54</sup>

#### IV. Discussion

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

In the Test Claim Decision, the Commission found that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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.<sup>55</sup>

The test claim statute states:

A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets 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 shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.<sup>56</sup>

The Commission found that the requirement that a school 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” means that the school must meet two conditions:

- 1) The school is eligible for Title I, Part A funds by either servicing an eligible school attendance area<sup>57</sup> or be a participating Title I, Part A school,<sup>58</sup> *and*
- 2) Meet the second test identified in section 6314(a)(1)(A),<sup>59</sup> requiring that not less than 40 percent of the children enrolled in the school are from low-income families.<sup>60</sup>

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<sup>54</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>55</sup> Exhibit A, Test Claim Decision, page 21.

<sup>56</sup> Education Code section 35292.6(a).

<sup>57</sup> The term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole. 20 United States Code, section 6313(a).

<sup>58</sup> See 20 United States Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(i).

<sup>59</sup> See also, 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(B).

<sup>60</sup> Exhibit A, Test Claim Decision, pages 14-15.

Any school that meets only one of the above conditions is not required by the test claim statute to perform the mandated activities.

The term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole.<sup>61</sup> This means, for example, if a school district has 80 percent of children from low-income families, then the costs for a school in that district with 75 percent of children from low-income families would not be reimbursable because that percentage is not “at least as high as the percentage of children from low-income families served by the local educational agency as a whole,” and the school, therefore, does not meet the first condition described above. Conversely, in a district with 38 percent of children from low-income families, the costs for a school in that district with 39 percent of children from low-income families would not be reimbursable because, although it meets the first condition, it does not meet the second condition.

Accordingly, Section II. of the Parameters and Guidelines addressing the “Eligible Claimants,” states the following:

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district’s schools that meet the following criteria:

- 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:
  - 1) the school is eligible for Title I, Part A funds, by either servicing an eligible school attendance area or by being a participating Title I, Part A school, and
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

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

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687, the test claim statute that imposes the mandate, became effective on January 1, 2018. Therefore, the period of reimbursement begins January 1, 2018.

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<sup>61</sup> 20 United States Code, section 6313(a).



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

The parties have filed comments on the Draft Expedited Parameters and Guidelines addressing the scope of the reimbursable activities, and the claimant and the interested person comments request reimbursement for activities alleged to be reasonably necessary to comply with the mandate.

The comments are addressed below.

1. Requests limiting the restrooms required to be stocked with feminine hygiene products to “pupil” restrooms or to “girl’s” restrooms are inconsistent with the test claim statute and are, therefore, denied.

For the approved activity to stock 50 percent of school’s restrooms with feminine hygiene products, Finance requests that the activity be limited to “pupil” restrooms as follows:

As stated in the Senate Floor analysis, and emphasized in the Commission's decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.<sup>62</sup>

Interested person, Reynolds Consulting Group, Inc. also urges the Commission to consider that the reimbursable activity be stated to “[s]tock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.”<sup>63</sup>

These requests are not consistent with the test claim statute. The activity approved by the Commission tracks the statutory language in Education Code section 35292.6. The plain language of the test claim statute states that a public school required to comply with the mandate “shall stock at least *50 percent of the school's restrooms* with feminine hygiene products at all times.”<sup>64</sup> In addition, CDE’s K-12 Toilet Requirement Summary states that the California Plumbing Code does not require specific toilets for staff and students, and, although CDE recommends that separate toilets be provided for staff for safety and liability concerns, some schools may not have separate restrooms for pupils and staff.<sup>65</sup> Furthermore, schools may have single occupancy restrooms designated as all-gender toilet facilities. Thus, limiting the restrooms required to be stocked with feminine hygiene products to only “pupil” restrooms or to “girls” restrooms is not consistent with the plain language of the test claim statute.

Accordingly, these requests are denied.

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<sup>62</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>63</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>64</sup> Education Code, section 35292.6(a).

<sup>65</sup> Exhibit X, CDE, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on July 8, 2019).

2. Section IV. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity and the number of restrooms in each of these schools in order to support the actual costs incurred for labor and materials.

For the approved activity to stock 50 percent of school's restrooms with feminine hygiene products, the claimant proposes to add in Section IV. of the Parameters and Guidelines specific language that employee time and cost of materials is reimbursable (in bold and italic):

Stock (***employee time and cost of materials***) 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.) Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>66</sup>

The "boilerplate" language in Section V. of the Parameters and Guidelines for direct cost reporting already authorizes reimbursement for the actual costs of employee time and materials for the approved reimbursable activity, as follows:

The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

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

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.<sup>67</sup>

Thus, the claimant's proposal to add the same information in Section IV. of the Parameters and Guidelines is not necessary.

However, in comments on the Draft Expedited Parameters and Guidelines, Finance continues to dispute the claimant's cost estimates for labor and materials and reiterates that "only actual costs—those incurred to implement the mandated activity—are eligible for mandated cost reimbursement," and that these "costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the

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<sup>66</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>67</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

reimbursable activities.”<sup>68</sup> During the test claim proceedings, and again in comments on the Draft Expedited Parameters and Guidelines, Finance argued that “the Claimant has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school,”<sup>69</sup> and that “the required costs may be overstated in the test claim.”<sup>70</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable:

To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states “50 percent of the school’s restrooms” shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school’s websites.<sup>71</sup>

Section IV. of the Parameters and Guidelines contains the following boilerplate language:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>72</sup>

The Commission agrees, however, that to support the actual labor and materials costs incurred as a result of this mandate, eligible claimants must identify the schools required to implement the mandated activity and the number of restrooms in each of these schools in order to show the relationship between the reimbursable activity and the costs claimed. The identification of the schools in the reimbursement claim will make it easy to access information to determine whether those schools meet the two conditions of eligibility for this program and how many pupils are enrolled in the school, which can provide valuable information about the reasonableness of the costs claims.

Thus, Section IV. of the Parameters and Guidelines is revised to reflect this clarification as follows:

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<sup>68</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>69</sup> Exhibit X, Finance’s Comments on the Draft Proposed Decision, page 1; Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>70</sup> Exhibit X, Finance’s Comments on the Test Claim, page 2.

<sup>71</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>72</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 5.

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity and the number of restrooms in each of these schools.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

3. The request by interested person, Reynold's Consulting Group, Inc., to allow a time study to support the labor costs claimed is denied because, although the Commission is authorized to adopt a reasonable reimbursement methodology (RRM), the Government Code does not authorize the Commission to approve the use of a time study for claiming actual costs.

Interested person, Reynolds Consulting Group, Inc., requests "[t]he use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward."<sup>73</sup>

Although the Controller has allowed time studies in limited circumstances under the Controller's audit authority,<sup>74</sup> the Government Code does not provide the Commission any authority to authorize reimbursement for actual costs based on a time study.

The Government Code only provides two methods of reimbursement: actual cost claiming, and claiming based on a proposed reasonable reimbursement methodology (RRM).<sup>75</sup> An RRM can be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.<sup>76</sup> The Commission, however, is not authorized to develop an RRM. Rather, an RRM may be developed by (1) Finance, (2) Controller, (3) an affected state agency, (4) a claimant, or (5) an interested party<sup>77</sup> and proposed to the Commission for inclusion in the Parameters and Guidelines.<sup>78</sup> The parties have not filed a request to adopt an RRM in this case.

Accordingly, the request is denied.

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<sup>73</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>74</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>75</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>76</sup> Government Code, section 17518.5.

<sup>77</sup> California Code of Regulations, title 2, section 1181.2(i) defines "Interested party" as a local agency, school district, or state agency, with a beneficial interest in the matter.

<sup>78</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

4. The proposed activities to purchase and install dispensers for feminine hygiene products are not supported by substantial evidence in the record explaining why the activities are reasonably necessary to comply with the mandate and are, therefore, denied.

The Test Claim Decision approved the following reimbursable state-mandated activity for school districts with qualifying schools:

- Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

The claimant requests that the Commission approve the following additional activity, which is quoted below, as reasonably necessary to comply with the mandate:

*Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.*<sup>79</sup>

Interested person, Reynolds Consulting Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost “of the feminine hygiene dispensers as well as any repairs/replacements of dispensers . . . .”<sup>80</sup>

Finance opposes these requests, stating that installation of dispensers is not mandated by the plain language of the test claim statute and that the claimant’s request for the additional activities to purchase and install dispensers must be supported by evidence showing that they are reasonably necessary for the performance of the state-mandated program.<sup>81</sup> Finance further notes that the claimant only showed that it purchased 115 dispensers in the first year and an additional 12 in the second year of the mandate, but that it did not specify the number of restrooms at each eligible school, making it impossible to determine the number of dispensers reasonably necessary to comply with the mandate.<sup>82</sup>

Pursuant to Government Code section 17557(a) and section 1183.7 of the Commission’s regulations, the Parameters and Guidelines must identify the activities mandated by the state and “may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.” “Reasonably necessary activities” are defined in the Commission’s regulations as follows:

Reasonably necessary activities” are those activities necessary to comply with the

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<sup>79</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

<sup>80</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>81</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>82</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>83</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity.<sup>84</sup>

The Commission denies the claimant's and interested person's requests. They have provided no evidence to support a finding that the proposed activities of purchasing and installing dispensers are reasonably necessary to comply with the mandate. While the claimant argues that "[i]ninstalling dispensers is a reasonable, healthy, safe and effective method to satisfy the statute's requirement 'to stock at least 50 percent of the school's restrooms with feminine hygiene products at all times,'" it provides no evidence to support this assertion.<sup>85</sup> Apart from invoices and a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District submitted with the Test Claim identifying the cost of the dispensers, no other evidence has been provided by the claimant with regard to the purchase and installation of dispensers.<sup>86</sup> The declaration only states that to implement provisions of the test claim statute in 2017-2018 fiscal year the claimant expended \$19,501.67 for the purchase and installation of 115 dispensers at the cost of \$156.74 per unit, and that the claimant's estimated 2018-2019 fiscal year costs include \$2,034.96 for the purchase and installation of 12 additional dispensers at \$169.58 per unit.<sup>87</sup> This does not show why the dispensers are necessary to comply with the mandate.

The claimant points out that the legislative history of the test claim statute suggests that the Legislature had anticipated that the cost of complying with the mandate would include the cost of purchasing and installing dispensers for feminine hygiene products as follows:

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

1) One-time state reimbursable mandated costs, ranging from the millions to tens of millions of dollars in Proposition 98 General Fund, for the bill's requirement

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<sup>83</sup> California Code of Regulations, title 2, section 1183.7(d).

<sup>84</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>85</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>86</sup> Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018), and 25-27 (Invoices).

<sup>87</sup> Exhibit X, Test Claim, pages 20-23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars.<sup>88</sup>

Legislative analysis with regard to the existence of state-mandated activities is not, however, binding on the Commission, and does not constitute evidence required to support an assertion of fact.<sup>89</sup>

The Commission did not approve the purchase and installation of the dispensers as mandated activities in the Test Claim Decision because the activities are not required by the plain language of the test claim statute. And there is nothing in the law, for example, that prohibits a school from stocking the feminine hygiene products in the restrooms in a box.

Thus, for the activities of purchasing and installing dispensers to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and section 1183.7 of the Commission's regulations, the parties must explain and support, with substantial evidence in the record and in accordance with the Commission's regulations, why the purchase and installation of dispensers are reasonably necessary to comply with the mandate. Section 1187.5 of the Commission's regulations requires that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so; and that hearsay evidence may only be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Accordingly, the Commission denies these requests.

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<sup>88</sup> Exhibit X, Assembly Concurrence in Senate Amendments Analysis of AB 10 (2017-2018), as amended September 1, 2017, page 1; Exhibit A, Test Claim Decision, page 8; Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>89</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817 (stating that any legislative findings are irrelevant to the issue of whether a state mandate exists); Government Code sections 17552 (stating that Government Code section 17500 et seq., provides the sole and exclusive procedure to claim reimbursement of state-mandated costs), and 17559(b) (requiring that the Commission's decision be supported with substantial evidence in the record); California Code of Regulations, title 2, sections 1183.7 (requiring that "all representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations") and section 1187.5 (requiring that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so; and that hearsay evidence may only be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.)

5. The proposed activity to develop policies and procedures is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

The claimant's Test Claim included a request for reimbursement to develop a school's policies and procedures, which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>90</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objects to the exclusion of costs for policies and procedures as follows:

However, Commission Staff Draft Parameters & Guidelines has rejected the Test Claim requesting reimbursement of the new activities that included costs and labor related to the purchase and installation of dispensers *as well as school policies and procedures*.<sup>91</sup>

Finance opposes the inclusion of this activity in the Parameters and Guidelines, stating that based on the plain language of the test claim statute, developing policies and procedures is not reasonably necessary to implement the mandate.<sup>92</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity.<sup>93</sup>

The Commission denies the claimant's request for costs to develop policies and procedures because the claimant provides no evidence explaining why the proposed activity is reasonably necessary to comply with the mandate.

In the Test Claim, the claimant asserted that "[s]chool districts have incurred or will incur costs" for "[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products" to implement the alleged mandate.<sup>94</sup> In the rebuttal to Finance's comments on the Test Claim, the claimant further argued that the "Test Claim does not assert 'a massive overhaul of school policies and procedures,'" that the costs "are very reasonable based on the time estimated to perform the tasks," and that accordingly "claimant requests that the Test Claim activities be approved as a reimbursable mandate."<sup>95</sup> To support these requests the claimant submitted a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District identifying the cost of

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<sup>90</sup> Exhibit X, Test Claim, pages 11, 21.

<sup>91</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>92</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>93</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>94</sup> Exhibit X, Test Claim, page 11.

<sup>95</sup> Exhibit X, Claimant's Rebuttal to Finance's Comments on the Test Claim, pages 1-2.



developing policies and procedures.<sup>96</sup> The declaration, however, only states that to implement provisions of the test claim statute in the 2017-2018 fiscal year, the claimant expended \$347.16 on “[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products” and that “[t]hese costs represent labor costs for Maintenance & Operations Director, Purchasing Director and Purchasing Buyer”.<sup>97</sup> The declaration further states that the claimant’s estimated 2018-2019 fiscal year costs for policies and procedures would amount to \$191.40, based on the previous year costs.<sup>98</sup> Thus, while the declaration provides evidence of costs, it does not provide any evidence that developing policies and procedures is reasonably necessary to comply with the mandate and no other evidence has been provided by the claimant with regard to this activity.

The Commission did not approve the development of policies and procedures as a mandated activity in the Test Claim Decision because the activity is not required by the plain language of the test claim statute. For this activity to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and sections 1183.7 and 1187.5 of the Commission’s regulations, the claimant must explain and support with substantial evidence in the record and in accordance with the Commission’s regulations, why developing policies and procedures is reasonably necessary to comply with the mandate. The record does not contain this evidence.

Accordingly, the Commission denies this request.

#### **D. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, and contracted services. However, fixed assets have been deleted from the Draft Proposed Parameters and Guidelines and are in strikeout in the Proposed Parameters and Guidelines because the activities of purchasing and installing dispensers are not mandated by the plain language of the test claim statute and there is no evidence in the record that these activities are reasonably necessary to comply with the mandate. Moreover, the claimant has identified no other fixed assets required to comply with the mandate. In addition, travel and training costs were not included in the Draft Expedited Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activity or submit substantial evidence to support such a request.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

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<sup>96</sup> Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>97</sup> Exhibit X, Test Claim, page 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>98</sup> Exhibit X, Test Claim, page 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

## **V. Conclusion**

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

## **DRAFT PROPOSED PARAMETERS AND GUIDELINES**

Education Code Section 35292.6, Statutes 2017, Chapter 687 (AB 10)

### *Public School Restrooms: Feminine Hygiene Products*

18-TC-01

Reimbursement for this program begins January 1, 2018.

#### **I. SUMMARY OF THE MANDATE**

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that meet specified criteria to stock 50 percent of such schools' restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

#### **II. ELIGIBLE CLAIMANTS**

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district's schools that meet the following criteria:

- 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:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, and
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

#### **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687 became effective on January 1, 2018, establishing the period of reimbursement beginning January 1, 2018.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.

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

#### IV. REIMBURSABLE ACTIVITIES

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

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

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

For each eligible claimant that incurs increased costs, the following activity is reimbursable for the district’s schools that meet the criteria described above:

4. A. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity and the number of restrooms in each of these schools.

***Reimbursement is not required to stock more than 50 percent of the school’s restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

## **V. CLAIM PREPARATION AND SUBMISSION**

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

### **A. Direct Cost Reporting**

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

#### **1. Salaries and Benefits**

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

#### **2. Materials and Supplies**

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

#### **3. Contracted Services**

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

#### **4. Fixed Assets**

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

### **B. Indirect Cost Rates**

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to

be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

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

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

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

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

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of

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<sup>1</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

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

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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

### DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

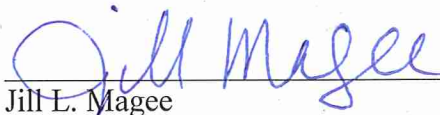
On July 17, 2019, I served the:

- **Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued July 17, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 17, 2019 at Sacramento, California.



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



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 7/12/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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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**RECEIVED**  
August 01, 2019  
**Commission on  
State Mandates**

August 1, 2019

**VIA CSM DROP BOX**

<https://www.csm.ca.gov/dropbox.php>

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, California 95814

***Re: Comments to Draft Proposed Parameters & Guidelines 18-TC-01, Public  
School Restrooms: Feminine Hygiene Products***

Dear Ms. Halsey:

Please be advised the following comments are regarding the *Draft Expedited Parameters & Guidelines* ("Parameters & Guidelines") Decision 18-TC-01.

Claimant disagrees with the draft following comments:

4. The proposed activities to purchase and install dispensers for feminine hygiene products are not supported by substantial evidence in the record explaining why the activities are reasonably necessary to comply with the mandate and are, therefore, denied.

Substantial evidence in the record includes legislative history acknowledging that the mandate would result in school districts incurring costs to purchase and install dispensers and the claimant has filed evidence supporting that cost. Commission staff has ignored the Commission members statements supporting the reimbursement of the dispenser costs at the Commission hearing when the test claim was approved. Furthermore, there is no evidence in the record of another method of stocking the feminine hygiene products.

Desert Sands Unified School District ("Claimant") contends that the legislative intended to reimburse for time and costs pertaining to the installation of dispensers. serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. *"The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars. (emphasis added; Assembly Analysis*

Artiano Shinoff

Heather Halsey  
Executive Director  
Commission on State Mandates

August 1, 2019  
Page 2

***Re: Comments to Draft Expedited Proposed Parameters & Guidelines Decision 18-TC-01, Public School Restrooms: Feminine Hygiene Products***

September 6, 2017) The precise cost can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars. (Senate Rules Committee; September 1, 2017)

Reasonably necessary activities are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. (2 CCR § 1183.7.) Installing dispensers is a reasonable, healthy, safe and effective method to satisfy the statute's requirement "to stock at least 50 percent of the school's restrooms with feminine hygiene products at all times." (Education Code Section 35292.6.) Claimant has submitted substantial evidence that is included in the record of the one-time related costs of purchasing and installing dispensers.

**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 information and belief.



Arthur M. Palkowitz  
Attorney for Claimant  
Desert Sands Unified School District

AMP:kaf

### 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 1, 2019, I served the:

- **Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines filed August 1, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 1, 2019 at Sacramento, California.



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



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 7/12/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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STATE of CALIFORNIA  
**COMMISSION ON STATE  
 MANDATES**



September 11, 2019

Mr. Arthur Palkowitz  
 Artiano Shinoff  
 2488 Historic Decatur Road, Suite 200  
 San Diego, CA 92106

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

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

**Re: Proposed Decision and Parameters and Guidelines**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
 Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
 Desert Sands Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

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

**Hearing**

This matter is set for hearing on **Friday, September 27, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California.

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. Staff will no longer send reminder emails because the Commission does not have the resources to contact each party and interested party. Therefore, the last communication from Commission Staff is this Proposed Decision and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

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

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

Heather Halsey  
 Executive Director

## **ITEM 7**

### **PROPOSED DECISION AND PARAMETERS AND GUIDELINES**

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

The period of reimbursement begins January 1, 2018.

Desert Sands Unified School District, Claimant

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#### **EXECUTIVE SUMMARY**

##### **I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (AB 10), which requires certain Title I-eligible public schools that maintain any combination of classes from grade 6 to grade 12, inclusive, to stock at all times and at no cost to pupils at least 50 percent of the school's restrooms with feminine hygiene products, which are defined as tampons and sanitary napkins.

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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, for such schools to:

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

## **II. Procedural History**

On May 24, 2019, the Commission adopted the Decision approving the Test Claim.<sup>1</sup> On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>2</sup> On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)<sup>3</sup> filed substantive comments on the Draft Expedited Parameters and Guidelines.<sup>4</sup> On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>5</sup> On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.<sup>6</sup> On June 18, 2019, the Department of Finance (Finance) filed late substantive comments on the Draft Expedited Parameters and Guidelines.<sup>7</sup> On June 19, 2019, the claimant filed rebuttal comments.<sup>8</sup> On June 25, 2019, Finance filed revised late comments on the Draft Expedited Parameters and Guidelines to replace the June 19 comments which were inadvertently filed without being certified and signed under penalty of perjury.<sup>9</sup> On June 26, 2019, the claimant filed rebuttal comments.<sup>10</sup> On July 17, 2019, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.<sup>11</sup> On August 1, 2019, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines.<sup>12</sup>

## **III. Discussion**

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

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<sup>1</sup> Exhibit A, Test Claim Decision.

<sup>2</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>3</sup> California Code of Regulations, title 2, section 1181.2(j) defines "Interested person" as "any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter."

<sup>4</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

<sup>5</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>6</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>7</sup> Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>8</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>9</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>10</sup> Exhibit I, Claimant's Rebuttal Comments.

<sup>11</sup> Exhibit J, Draft Proposed Decision and Parameters and Guidelines.

<sup>12</sup> Exhibit K, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.



Commission staff proposes to clarify Section II. of the Parameters and Guidelines addressing “Eligible Claimants” as follows:

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district’s schools that meet the following criteria:

- 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:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

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

Because the test claim statute, Statutes 2017, chapter 687, became effective on January 1, 2018, the period of reimbursement begins January 1, 2018.

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

1. Requests limiting the restrooms required to be stocked with feminine hygiene products to “pupil” restrooms or to “girl’s” restrooms are inconsistent with the test claim statute and are, therefore, denied.

For the approved activity to stock 50 percent of school’s restrooms with feminine hygiene products, Finance requests that the activity be limited to “pupil” restrooms.<sup>13</sup> Interested person, Reynolds Consulting Group, Inc., also urges the Commission to state the reimbursable activity as “[s]tock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.”<sup>14</sup>

These requests are not consistent with the test claim statute, and are denied.

2. Section IV. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity and the number of restrooms in each of these schools in order to support the actual costs incurred for labor and materials.

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<sup>13</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>14</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

For the approved activity to stock 50 percent of school's restrooms with feminine hygiene products, the claimant proposes to add in Section IV. of the Parameters and Guidelines specific language that employee time and cost of materials is reimbursable.<sup>15</sup>

The "boilerplate" language in Section V. of the Parameters and Guidelines for direct cost reporting already authorizes reimbursement for the actual costs of employee time and materials for the approved reimbursable activity.<sup>16</sup> Thus, the claimant's proposal to add the same information in Section IV. of the Parameters and Guidelines is not necessary.

During the test claim proceedings, and again in comments on the Draft Expedited Parameters and Guidelines, Finance has argued that "the Claimant has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school,"<sup>17</sup> and that "the required costs may be overstated in the test claim."<sup>18</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable.<sup>19</sup>

Staff agrees that to support the actual labor and materials costs incurred as a result of this mandate, eligible claimants must identify the schools required to implement the mandated activity and the number of restrooms in each of these schools in order to show the relationship between the reimbursable activity and the costs claimed. The identification of the schools in the reimbursement claim will make it easy to access information to determine whether those schools meet the two conditions of eligibility for this program and how many pupils are enrolled in the school, which can provide valuable information about the reasonableness of the costs claims. Therefore, Section IV. of the Parameters and Guidelines is revised to reflect this clarification as follows:

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity and the number of restrooms in each of these schools.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

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<sup>15</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>16</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>17</sup> Exhibit L, Finance's Comments on the Draft Proposed Decision, page 1; Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>18</sup> Exhibit L, Finance's Comments on the Test Claim, page 2.

<sup>19</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

3. The request by interested person, Reynold’s Consulting Group, Inc., to allow a time study to support the labor costs claimed is denied because, although the Commission is authorized to adopt a reasonable reimbursement methodology (RRM), the Government Code does not authorize the Commission to approve the use of a time study for claiming actual costs.

Interested person, Reynolds Consulting Group, Inc., requests “[t]he use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward.”<sup>20</sup>

Although the Controller has allowed time studies in limited circumstances under the Controller’s audit authority,<sup>21</sup> the Government Code does not provide the Commission any authority to authorize reimbursement for actual costs based on a time study and, thus, the request is denied. The Government Code only provides two methods of reimbursement: actual cost claiming, and claiming based on a proposed reasonable reimbursement methodology (RRM).<sup>22</sup> An RRM can be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.<sup>23</sup> The Commission, however, is not authorized to develop an RRM,<sup>24</sup> and the parties have not filed a request to adopt an RRM in this case.

4. The proposed activities to purchase and install dispensers for feminine hygiene products are not supported by substantial evidence in the record explaining why the activities are reasonably necessary to comply with the mandate and are, therefore, denied.

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity.<sup>25</sup> Here, the claimant has asserted and provided evidence of costs and pointed to legislative intent in legislative analyses, but has not provided any evidence to show why reimbursement for the cost of dispensers and any repairs/replacements of dispensers is necessary for the performance of the state-mandated activity.

The claimant requests that the Commission approve “purchasing and installation of dispensers” as reasonably necessary to comply with the mandate.<sup>26</sup> Interested person, Reynolds Consulting

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<sup>20</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>21</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>22</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>23</sup> Government Code, section 17518.5.

<sup>24</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

<sup>25</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5; Code of Civil Procedure section 1094.5(b).

<sup>26</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost of dispensers and any repairs/replacements of dispensers.<sup>27</sup>

Although the claimant has asserted costs and provided evidence of costs and pointed to legislative analyses to show legislative intent, neither the claimant or the interested person have provided any evidence explaining why the proposed activities of purchasing and installing dispensers are reasonably necessary to comply with the mandate and, thus, the requests are denied.

5. The proposed activity to develop policies and procedures is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

Any proposed reasonably necessary activity must be supported by substantial evidence in the record showing that proposed activity is necessary for the performance of the state-mandated activity.<sup>28</sup> The claimant's Test Claim included a request for reimbursement to develop a school's policies and procedures, which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>29</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objected to the exclusion of costs for development of a school's policies and procedures but again did not file any evidence to show why the proposed activity is necessary for the performance of the state-mandated activity.<sup>30</sup>

This activity is denied because the claimant has not provided substantial evidence in the record to support a finding that developing policies and procedures is reasonably necessary to comply with the mandate.

#### **D. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, and contracted services. However, fixed assets are not included in the Parameters and Guidelines because purchasing and installing dispensers are not mandated by the test claim statute and there is no evidence that these activities are reasonably necessary to comply with the mandate. Moreover, the claimant has identified no other fixed assets required to comply with the mandate. In addition, travel and training costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activity or submit substantial evidence to support such a request.

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<sup>27</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>28</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>29</sup> Exhibit L, Test Claim, pages 11, 21. See also Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>30</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

**IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning January 1, 2018.

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

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

The period of reimbursement begins  
January 1, 2018.

Case No.: 18-TC-01

*Public School Restrooms: Feminine Hygiene  
Products*

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

*(Adopted September 27, 2019)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on September 27, 2019. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified/rejected] the Decision and Parameters and Guidelines by a vote of [vote count will be in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

## **I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (AB 10), which requires certain Title I-eligible public schools that maintain any combination of classes from grade 6 to grade 12, inclusive, to stock at all times and at no cost to pupils at least 50 percent of the school's restrooms with feminine hygiene products, which are defined as tampons and sanitary napkins.

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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, for such schools to:

- Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

## **II. Procedural History**

On May 24, 2019, the Commission adopted the Test Claim Decision.<sup>31</sup> On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>32</sup> On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)<sup>33</sup> filed comments on the Draft Expedited Parameters and Guidelines.<sup>34</sup> On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>35</sup> On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.<sup>36</sup> On June 18, 2019, the Department of Finance (Finance) filed late comments on the Draft Expedited Parameters and Guidelines.<sup>37</sup> On June 19, 2019, the claimant filed rebuttal

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<sup>31</sup> Exhibit A, Test Claim Decision.

<sup>32</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>33</sup> California Code of Regulations, title 2, section 1181.2(j) defines "Interested person" as "any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter."

<sup>34</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

<sup>35</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>36</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>37</sup> Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

comments.<sup>38</sup> On June 25, 2019, Finance filed revised late comments on the Draft Expedited Parameters and Guidelines to replace the June 19 comments which were inadvertently filed without being certified and signed under penalty of perjury.<sup>39</sup> On June 26, 2019, the claimant filed rebuttal comments.<sup>40</sup> On July 17, 2019, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.<sup>41</sup> On August 1, 2019, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines.<sup>42</sup>

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

#### **A. Desert Sands Unified School District**

The claimant's comments on the Draft Expedited Parameters and Guidelines propose several changes to the Proposed Parameters and Guidelines which include reimbursement for purchasing and installing dispensers, and for developing policies and procedures.<sup>43</sup>

The claimant proposes the following amendments to Section IV. of the Proposed Parameters and Guidelines describing reimbursable activities (with amendments in bold italics):

1. Stock (***employee time and cost of materials***) 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.) Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>44</sup>
2. ***Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.***<sup>45</sup>

The claimant's proposed language does not address the claimant's request for reimbursement to develop policies and procedures referred to on page 1 of its comments.<sup>46</sup>

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<sup>38</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>39</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>40</sup> Exhibit I, Claimant's Rebuttal Comments.

<sup>41</sup> Exhibit J, Draft Proposed Decision and Parameters and Guidelines.

<sup>42</sup> Exhibit K, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

<sup>43</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>44</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>45</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>46</sup> In addition, the claimant's comments and rebuttal comments on the Draft Expedited Parameters and Guidelines do not request reimbursement for training, which was requested in the Test Claim. (Exhibit L, Test Claim, pages 11-12.) The Commission's Test Claim Decision



On June 19, 2019, the claimant filed rebuttal comments objecting to comments filed by Finance as untimely and not signed under penalty of perjury and to comments filed by the Controller as not signed under penalty of perjury.<sup>47</sup> The claimant requests that the comments be stricken from the record.<sup>48</sup> On June 26, 2019, the claimant filed rebuttal comments objecting to Finance’s revised late comments as untimely and not signed under penalty of perjury and requesting that these comments be stricken from the record.<sup>49</sup>

On August 1, 2019, the claimant filed comments on the Draft Proposed Decision Parameters and Guidelines, arguing that proposed activities to purchase and install dispensers for feminine hygiene products are supported by substantial evidence in the record, in the form of “legislative history acknowledging that the mandate would result in school districts incurring costs to purchase and install dispensers” and the claimant’s evidence supporting these costs; and asserting that “Commission staff has ignored the Commission members statements supporting

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notes that “training” may be proposed for inclusion in the Parameters and Guidelines if it is supported by evidence in the record showing it is “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. (Exhibit A, Test Claim Decision, pages 15-16.)

<sup>47</sup> Exhibit G, Claimant’s Rebuttal Comments, page 1.

<sup>48</sup> Exhibit G, Claimant’s Rebuttal Comments, page 1.

<sup>49</sup> Exhibit I, Claimant’s Rebuttal Comments. Finance’s comments and revised comments were not filed within 21 days of service of the Draft Expedited Parameters and Guidelines as required and were, therefore, late. (Cal. Code Regs., tit. 2, 1183.9(b).) However, written comments received at least 15 days in advance of the meeting [i.e. late filings], shall be included in the Commission’s meeting binders. (Cal. Code Regs., tit. 2, § 1181.10.) Several claimants have asserted, in a number of matters, that late comments should not be considered in Commission decisions as is permitted by the Commission’s regulations (See Cal. Code Regs., tit. 2, §§ 1183.6(d), 1183.13(c), 1183.17(k), 1184.1(k), 1185.7(e), 1190.5(a)(3)(A)), but given that late filings, up to 15 days before the hearing, shall be included in the Commission’s meeting binders, that the same testimony may be submitted at the hearing, and that this Draft Proposed Decision had not yet been issued at the time that the late comments were filed, staff is including these comments in the analysis to ease the decision making process for the Commission Members. Furthermore, contrary to the claimant’s assertion, Finance’s revised comments were signed under penalty of perjury. (See Exhibit H, page 3.) As to the Controller’s comments, they were not signed under penalty of perjury, as required, but also do not contain any substance other than the Controller’s agreement with the Draft Expedited Parameters and Guidelines. The claimant is correct, however, that if assertions of fact are made which are not supported by evidence in the record, they will not be considered. (Cal. Code Regs., tit. 2, §§ 1183.7, 1187.5.).

the reimbursement of the dispenser costs at the Commission hearing when the test claim was approved.”<sup>50,51</sup>

### **B. State Controller’s Office**

On June 14, 2019, the Controller filed comments on the Draft Expedited Parameters and Guidelines and recommends “no changes.”<sup>52</sup> The Controller did not comment on the Draft Proposed Decision and Parameters and Guidelines.

### **C. Department of Finance**

Finance filed late comments on the Draft Expedited Parameters and Guidelines expressing several concerns and proposing a change.<sup>53</sup>

First, Finance states that it “only supports the cost of the feminine hygiene products as reimbursable costs, based on the plain language of the test claim statute” and that “[a]ll other activities, such as the cost and installation of dispensers, training of personnel, and developing policies and procedures, must be supported by evidence showing that they are ‘reasonably necessary for the performance of the state-mandated program.’”<sup>54</sup> Finance reiterates its position that, based on the plain language of the test claim statute, the activities of training personnel and developing policies and procedures are not reasonably necessary to implement the mandate.<sup>55</sup> Finance further states that only actual costs for the state-mandated activity, that are traceable and supported by source documents that show the validity of the costs, are eligible for reimbursement.<sup>56</sup>

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<sup>50</sup> The claimant appears to refer to the discussion that took place at the test claim hearing in response to the claimant’s request that the Commission approve the activity to purchase and install dispensers. The claimant was advised that this activity was not approved in the Test Claim Decision because it is not required by the plain language of the test claim statute; but that it could be proposed for inclusion in the Parameters and Guidelines as a reasonably necessary activity, to be considered in a separate proceeding. Commission member Stowers then commented that she would be looking forward to reading the Parameters and Guidelines and having “a reasonableness to include the dispensers.” Exhibit L, CSM Public Hearing (May 24, 2019), transcript of proceedings, pages 18-21.

<sup>51</sup> Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

<sup>52</sup> Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>53</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>54</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>55</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>56</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

Finally, Finance continues to dispute the cost estimates submitted by the claimant with the Test Claim and notes the following additional concerns:

- As stated in the Senate Floor analysis, and emphasized in the Commission's decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.
- The claimant purchased 115 dispensers for seven eligible schools and purchased an additional 12 in the second year of the mandate. To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states "50 percent of the school's restrooms" shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.<sup>57</sup>

Finance did not comment on the Draft Proposed Decision and Parameters and Guidelines.

#### **D. Interested Person, Reynolds Consulting Group, Inc.**

In its comments on the Draft Expedited Parameters and Guidelines, the Reynolds Consulting Group, Inc., recommends that the Commission address the following issues in relation to the reimbursable activities:

- The use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward.
- The cost of the feminine hygiene dispensers as well as any repairs/replacements of dispensers from January 1, 2018, and forward.
- Stock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.<sup>58</sup>

No comments have been filed by the Reynolds Consulting Group, Inc., on the Draft Proposed Decision and Parameters and Guidelines.

### **IV. Discussion**

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

In the Test Claim Decision, the Commission found that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12,

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<sup>57</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>58</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

inclusive; *and* (2) 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.<sup>59</sup>

The test claim statute states:

A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets 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 shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.<sup>60</sup>

The Commission found that the requirement that a school 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” means that the school must meet two conditions:

- 1) The school is eligible for Title I, Part A funds by either servicing an eligible school attendance area<sup>61</sup> or be a participating Title I, Part A school,<sup>62</sup> *and*
- 2) Meet the second test identified in section 6314(a)(1)(A),<sup>63</sup> requiring that not less than 40 percent of the children enrolled in the school are from low-income families.<sup>64</sup>

Any school that meets only one of the above conditions is not required by the test claim statute to perform the mandated activities.

The term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole.<sup>65</sup> This means, for example, if a school district has 80 percent of children from low-income families, then the costs for a school in that district with 75 percent of children from low-income families would not be reimbursable because that percentage is not “at least as high as the percentage of children from low-income families served by the local educational agency as a whole,” and the school, therefore, does not meet the first condition described above. Conversely, in a district with 38 percent of children from low-income families, the costs for a school in that district with 39

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<sup>59</sup> Exhibit A, Test Claim Decision, page 21.

<sup>60</sup> Education Code section 35292.6(a).

<sup>61</sup> The term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole. 20 United States Code, section 6313(a).

<sup>62</sup> See 20 United States Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(i).

<sup>63</sup> See also, 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(B).

<sup>64</sup> Exhibit A, Test Claim Decision, pages 14-15.

<sup>65</sup> 20 United States Code, section 6313(a).

percent of children from low-income families would not be reimbursable because, although it meets the first condition, it does not meet the second condition.

Accordingly, Section II. of the Parameters and Guidelines addressing the “Eligible Claimants,” states the following:

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district’s schools that meet the following criteria:

- 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:
  - 1) the school is eligible for Title I, Part A funds, by either servicing an eligible school attendance area or by being a participating Title I, Part A school, and
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

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

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687, the test claim statute that imposes the mandate, became effective on January 1, 2018. Therefore, the period of reimbursement begins January 1, 2018.

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

The parties have filed comments on the Draft Expedited Parameters and Guidelines addressing the scope of the reimbursable activities, and the claimant and the interested person comments request reimbursement for activities alleged to be reasonably necessary to comply with the mandate.

The comments are addressed below.

1. Requests limiting the restrooms required to be stocked with feminine hygiene products to “pupil” restrooms or to “girl’s” restrooms are inconsistent with the test claim statute and are, therefore, denied.

For the approved activity to stock 50 percent of school’s restrooms with feminine hygiene products, Finance requests that the activity be limited to “pupil” restrooms as follows:

As stated in the Senate Floor analysis, and emphasized in the Commission's decision, the intent of the test claim statute is to provide female pupils with access

to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.<sup>66</sup>

Interested person, Reynolds Consulting Group, Inc. also urges the Commission to consider that the reimbursable activity be stated to “[s]tock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.”<sup>67</sup>

These requests are not consistent with the test claim statute. The activity approved by the Commission tracks the statutory language in Education Code section 35292.6. The plain language of the test claim statute states that a public school required to comply with the mandate “shall stock at least *50 percent of the school's restrooms* with feminine hygiene products at all times.”<sup>68</sup> In addition, CDE’s K-12 Toilet Requirement Summary states that the California Plumbing Code does not require specific toilets for staff and students, and, although CDE recommends that separate toilets be provided for staff for safety and liability concerns, some schools may not have separate restrooms for pupils and staff.<sup>69</sup> Furthermore, schools may have single occupancy restrooms designated as all-gender toilet facilities. Thus, limiting the restrooms required to be stocked with feminine hygiene products to only “pupil” restrooms or to “girls” restrooms is not consistent with the plain language of the test claim statute.

Accordingly, these requests are denied.

2. Section IV. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity and the number of restrooms in each of these schools in order to support the actual costs incurred for labor and materials.

For the approved activity to stock 50 percent of school’s restrooms with feminine hygiene products, the claimant proposes to add in Section IV. of the Parameters and Guidelines specific language that employee time and cost of materials is reimbursable (in bold and italic):

Stock (***employee time and cost of materials***) 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)  
Reimbursement is not required to stock more than 50 percent of the school’s restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>70</sup>

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<sup>66</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>67</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>68</sup> Education Code, section 35292.6(a).

<sup>69</sup> Exhibit L, CDE, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on July 8, 2019).

<sup>70</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

The “boilerplate” language in Section V. of the Parameters and Guidelines for direct cost reporting already authorizes reimbursement for the actual costs of employee time and materials for the approved reimbursable activity, as follows:

The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

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

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.<sup>71</sup>

Thus, the claimant’s proposal to add the same information in Section IV. of the Parameters and Guidelines is not necessary.

However, in comments on the Draft Expedited Parameters and Guidelines, Finance continues to dispute the claimant’s cost estimates for labor and materials and reiterates that “only actual costs—those incurred to implement the mandated activity— are eligible for mandated cost reimbursement,” and that these “costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.”<sup>72</sup> During the test claim proceedings, and again in comments on the Draft Expedited Parameters and Guidelines, Finance argued that “the Claimant has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school,”<sup>73</sup> and that “the required costs may be overstated in the test claim.”<sup>74</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable:

To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states “50 percent of the school’s restrooms” shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the

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<sup>71</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>72</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>73</sup> Exhibit L, Finance’s Comments on the Draft Proposed Decision, page 1; Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>74</sup> Exhibit L, Finance’s Comments on the Test Claim, page 2.

mandated program. The number of restrooms is not available on the school's websites.<sup>75</sup>

Section IV. of the Parameters and Guidelines contains the following boilerplate language:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>76</sup>

The Commission agrees, however, that to support the actual labor and materials costs incurred as a result of this mandate, eligible claimants must identify the schools required to implement the mandated activity and the number of restrooms in each of these schools in order to show the relationship between the reimbursable activity and the costs claimed. The identification of the schools in the reimbursement claim will make it easy to access information to determine whether those schools meet the two conditions of eligibility for this program and how many pupils are enrolled in the school, which can provide valuable information about the reasonableness of the costs claims.

Thus, Section IV. of the Parameters and Guidelines is revised to reflect this clarification as follows:

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity and the number of restrooms in each of these schools.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

3. The request by interested person, Reynold's Consulting Group, Inc., to allow a time study to support the labor costs claimed is denied because, although the Commission is authorized to adopt a reasonable reimbursement methodology (RRM), the Government Code does not authorize the Commission to approve the use of a time study for claiming actual costs.

Interested person, Reynolds Consulting Group, Inc., requests "[t]he use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward."<sup>77</sup>

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<sup>75</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>76</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 5.

<sup>77</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.



Although the Controller has allowed time studies in limited circumstances under the Controller's audit authority,<sup>78</sup> the Government Code does not provide the Commission any authority to authorize reimbursement for actual costs based on a time study.

The Government Code only provides two methods of reimbursement: actual cost claiming, and claiming based on a proposed reasonable reimbursement methodology (RRM).<sup>79</sup> An RRM can be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.<sup>80</sup> The Commission, however, is not authorized to develop an RRM. Rather, an RRM may be developed by (1) Finance, (2) Controller, (3) an affected state agency, (4) a claimant, or (5) an interested party<sup>81</sup> and proposed to the Commission for inclusion in the Parameters and Guidelines.<sup>82</sup> The parties have not filed a request to adopt an RRM in this case.

Accordingly, the request is denied.

4. The proposed activities to purchase and install dispensers for feminine hygiene products are not supported by substantial evidence in the record explaining why the activities are reasonably necessary to comply with the mandate and are, therefore, denied.

The Test Claim Decision approved the following reimbursable state-mandated activity for school districts with qualifying schools:

- Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

The claimant requests that the Commission approve the following additional activity, which is quoted below, as reasonably necessary to comply with the mandate:

*Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.*<sup>83</sup>

Interested person, Reynolds Consulting Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost "of the feminine hygiene dispensers as well as

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<sup>78</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>79</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>80</sup> Government Code, section 17518.5.

<sup>81</sup> California Code of Regulations, title 2, section 1181.2(i) defines "Interested party" as a local agency, school district, or state agency, with a beneficial interest in the matter.

<sup>82</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

<sup>83</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

any repairs/replacements of dispensers . . . .”<sup>84</sup>

Finance opposes these requests, stating that installation of dispensers is not mandated by the plain language of the test claim statute and that the claimant’s request for the additional activities to purchase and install dispensers must be supported by evidence showing that they are reasonably necessary for the performance of the state-mandated program.<sup>85</sup> Finance further notes that the claimant only showed that it purchased 115 dispensers in the first year and an additional 12 in the second year of the mandate, but that it did not specify the number of restrooms at each eligible school, making it impossible to determine the number of dispensers reasonably necessary to comply with the mandate.<sup>86</sup>

Pursuant to Government Code section 17557(a) and section 1183.7 of the Commission’s regulations, the Parameters and Guidelines must identify the activities mandated by the state and “may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.” “Reasonably necessary activities” are defined in the Commission’s regulations as follows:

Reasonably necessary activities” are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>87</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity in order for the Commission’s approval of that activity to be correct as a

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<sup>84</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>85</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>86</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>87</sup> California Code of Regulations, title 2, section 1183.7(d).

matter of law.<sup>88</sup> “[I]nstance is insufficient to support a legal conclusion.”<sup>89</sup>

The Commission denies the claimant’s and interested person’s requests. They have provided no evidence to support a finding that the proposed activities of purchasing and installing dispensers are reasonably necessary to comply with the mandate. While the claimant argues that “[i]ninstalling dispensers is a reasonable, healthy, safe and effective method to satisfy the statute’s requirement ‘to stock at least 50 percent of the school’s restrooms with feminine hygiene products at all times,’” it provides no evidence to support this assertion.<sup>90</sup> Apart from invoices and a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District submitted with the Test Claim identifying the cost of the dispensers, no other evidence has been provided by the claimant with regard to the purchase and installation of dispensers.<sup>91</sup> The declaration only states that to implement provisions of the test claim statute in 2017-2018 fiscal year the claimant expended \$19,501.67 for the purchase and installation of 115 dispensers at the cost of \$156.74 per unit, and that the claimant’s estimated 2018-2019 fiscal year costs include \$2,034.96 for the purchase and installation of 12 additional dispensers at \$169.58 per unit.<sup>92</sup> This does not show *why* the dispensers are necessary to comply with the mandate to stock 50 percent of the school’s restrooms with feminine hygiene products.

The claimant points out that the legislative history of the test claim statute suggests that the Legislature had anticipated that the cost of complying with the mandate would include the cost of purchasing and installing dispensers for feminine hygiene products. The language quoted by the claimant is from the following analysis:

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

1) One-time state reimbursable mandated costs, ranging from the millions to tens of millions of dollars in Proposition 98 General Fund, for the bill’s requirement for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars.<sup>93</sup>

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<sup>88</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5; Code of Civil Procedure section 1094.5(b), stating that “[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”

<sup>89</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1369 (concurring opinion).

<sup>90</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>91</sup> Exhibit L, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018), and 25-27 (Invoices).

<sup>92</sup> Exhibit L, Test Claim, pages 20-23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>93</sup> Exhibit L, Assembly Concurrence in Senate Amendments Analysis of AB 10 (2017-2018), as

The claimant contends that its evidence of costs for the purchase and installation of dispensers, coupled with “legislative history acknowledging that the mandate would result in school districts incurring costs to purchase and install dispensers,” constitutes substantial evidence in the record to support this activity as claimed.<sup>94</sup>

However, legislative analysis, from which one may infer the Legislature’s intent, is not binding on the Commission as to the existence of state-mandated activities and does not constitute evidence required to support an assertion of fact with respect to what is reasonably necessary to comply with the mandate.<sup>95</sup>

The Commission did not approve the purchase and installation of the dispensers as mandated activities in the Test Claim Decision because the activities are not required by the plain language of the test claim statute. Rather, the state has left the discretion to determine how the feminine hygiene products (tampons and sanitary napkins) will be made available to students, with the schools. Thus, there is nothing in the law, for example, that prohibits a school from stocking the feminine hygiene products in the restrooms in the box the products came in or in existing dispensers.<sup>96</sup>

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amended September 1, 2017, page 1; Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2; Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

<sup>94</sup> Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

<sup>95</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817 (stating that any legislative findings are irrelevant to the issue of whether a state mandate exists); Government Code sections 17552 (stating that Government Code section 17500 et seq., provides the sole and exclusive procedure to claim reimbursement of state-mandated costs), and 17559(b) (requiring that the Commission’s decision be supported with substantial evidence in the record); California Code of Regulations, title 2, sections 1183.7 (requiring that “all representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations”) and section 1187.5 (requiring that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so; and that hearsay evidence may only be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.) See also, Evidence Code section 1200, which defines hearsay as “evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.”

<sup>96</sup> See e.g., Exhibit L, Berkeley USD Board Meeting (November 28, 2018), meeting agenda, pages 5-6 (stating that prior to the enactment of the test claim statute several BUSD secondary schools already had dispensers for menstrual products installed in the restrooms), <https://agendaonline.net/public/Meeting.aspx?AgencyID=232&MeetingID=68149&AgencyTypeID=1&IsArchived=False> (accessed on August 14, 2019); Exhibit L, Berkeleyside, Berkeley Unified could require free menstrual products in school bathrooms (November 14, 2018),

Therefore, for the activities of purchasing and installing dispensers to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and section 1183.7 of the Commission's regulations, the parties must explain and support, with substantial evidence in the record and in accordance with the Commission's regulations, *why* the purchase and installation of dispensers are reasonably necessary to comply with the mandate. Section 1187.5 of the Commission's regulations requires that oral or written representations of fact shall be under oath or affirmation; that all written representations of fact must be signed under penalty of perjury by persons who are authorized and competent to do so; and that hearsay evidence may only be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Thus, a declaration signed under penalty of perjury or sworn testimony from an employee of an eligible claimant, who is authorized and competent to provide testimony, explaining why purchasing and installing dispensers is reasonably necessary to comply with the mandate to stock 50 percent of the school's restrooms with feminine hygiene products, would comply with the evidentiary requirements.

Accordingly, based on this record, the Commission denies these requests.

5. The proposed activity to develop policies and procedures is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

The claimant's Test Claim included a request for reimbursement to develop a school's policies and procedures, which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>97</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objects to the exclusion of costs for policies and procedures as follows:

However, Commission Staff Draft Parameters & Guidelines has rejected the Test Claim requesting reimbursement of the new activities that included costs and labor related to the purchase and installation of dispensers *as well as school policies and procedures*.<sup>98</sup>

Finance opposes the inclusion of this activity in the Parameters and Guidelines, stating that based on the plain language of the test claim statute, developing policies and procedures is not reasonably necessary to implement the mandate.<sup>99</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-

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<https://www.berkeleyside.com/2018/11/14/berkeley-unified-could-require-free-menstrual-products-in-school-bathrooms> (accessed on August 16, 2019).

<sup>97</sup> Exhibit L, Test Claim, pages 11, 21.

<sup>98</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>99</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

mandated activity.<sup>100</sup>

The Commission denies the claimant's request for costs to develop policies and procedures because the claimant provides no evidence explaining why the proposed activity is reasonably necessary to comply with the mandate.

In the Test Claim, the claimant asserted that "[s]chool districts have incurred or will incur costs" for "[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products" to implement the alleged mandate.<sup>101</sup> In the rebuttal to Finance's comments on the Test Claim, the claimant further argued that the "Test Claim does not assert 'a massive overhaul of school policies and procedures,'" that the costs "are very reasonable based on the time estimated to perform the tasks," and that accordingly "claimant requests that the Test Claim activities be approved as a reimbursable mandate."<sup>102</sup> To support these requests the claimant submitted a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District identifying the cost of developing policies and procedures.<sup>103</sup> The declaration, however, only states that to implement provisions of the test claim statute in the 2017-2018 fiscal year, the claimant expended \$347.16 on "[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products" and that "[t]hese costs represent labor costs for Maintenance & Operations Director, Purchasing Director and Purchasing Buyer".<sup>104</sup> The declaration further states that the claimant's estimated 2018-2019 fiscal year costs for policies and procedures would amount to \$191.40, based on the previous year costs.<sup>105</sup> Thus, while the declaration provides evidence of costs, it does not provide any evidence that developing policies and procedures is reasonably necessary to comply with the mandate and no other evidence has been provided by the claimant with regard to this activity.

The Commission did not approve the development of policies and procedures as a mandated activity in the Test Claim Decision because the activity is not required by the plain language of the test claim statute. For this activity to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and sections 1183.7 and 1187.5 of the Commission's regulations, the claimant must explain and support with substantial evidence in the record and in accordance with the Commission's regulations, why developing policies and procedures is reasonably necessary to comply with the mandate. The record does

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<sup>100</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>101</sup> Exhibit L, Test Claim, page 11.

<sup>102</sup> Exhibit L, Claimant's Rebuttal to Finance's Comments on the Test Claim, pages 1-2.

<sup>103</sup> Exhibit L, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>104</sup> Exhibit L, Test Claim, page 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>105</sup> Exhibit L, Test Claim, page 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

not contain this evidence.

Accordingly, the Commission denies this request.

#### **D. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, and contracted services. However, fixed assets have been deleted from the Draft Proposed Parameters and Guidelines and are in strikeout in the Proposed Parameters and Guidelines because the activities of purchasing and installing dispensers are not mandated by the plain language of the test claim statute and there is no evidence in the record that these activities are reasonably necessary to comply with the mandate. Moreover, the claimant has identified no other fixed assets required to comply with the mandate. In addition, travel and training costs were not included in the Draft Expedited Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activity or submit substantial evidence to support such a request.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

#### **V. Conclusion**

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

### **PARAMETERS AND GUIDELINES**

Education Code Section 35292.6, Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

Reimbursement for this program begins January 1, 2018.

#### **I. SUMMARY OF THE MANDATE**

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that meet specified criteria to stock 50 percent of such schools' restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

#### **II. ELIGIBLE CLAIMANTS**

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district's schools that meet the following criteria:

- 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:

- 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, and
- 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

### **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687 became effective on January 1, 2018, establishing the period of reimbursement beginning January 1, 2018.

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

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

### **IV. REIMBURSABLE ACTIVITIES**

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5.



Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant that incurs increased costs, the following activity is reimbursable for the district's schools that meet the criteria described above:

- A. A. Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity and the number of restrooms in each of these schools.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

## **V. CLAIM PREPARATION AND SUBMISSION**

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

### A. Direct Cost Reporting

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

#### **1. Salaries and Benefits**

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

#### **2. Materials and Supplies**

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

#### **3. Contracted Services**

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent

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

#### **4. Fixed Assets**

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

#### **B. Indirect Cost Rates**

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

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

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

### **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>106</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

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<sup>106</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

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

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

## **IX. REMEDIES BEFORE THE COMMISSION**

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

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

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

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

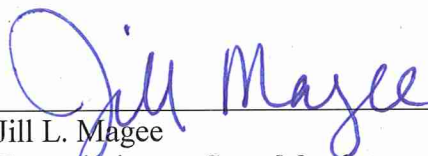
On September 11, 2019, I served the:

- **Proposed Decision and Parameters and Guidelines issued September 11, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 September 11, 2019 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/13/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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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**RECEIVED**  
September 18, 2019  
**Commission on  
State Mandates**

September 18, 2019

**LATE FILING**

**VIA CSM DROP BOX**

<https://www.csm.ca.gov/dropbox.php>

Heather Halsey  
Executive Director  
Commission on State Mandates  
980 9th Street, Suite 300  
Sacramento, California 95814

***Re: Comments to Proposed Parameters & Guidelines 18-TC-01, Public School  
Restrooms: Feminine Hygiene Products***

Dear Ms. Halsey:

Please be advised the following comments are regarding the *Draft Expedited Parameters & Guidelines* ("Parameters & Guidelines") Decision 18-TC-01.

Claimant disagrees with the draft following comments:

4. The proposed activities to purchase and install dispensers for feminine hygiene products are not supported by substantial evidence in the record explaining why the activities are reasonably necessary to comply with the mandate and are, therefore, denied.

Substantial evidence in the record includes the following:

1. Legislative history acknowledging that the mandate would result in school districts incurring costs to purchase and install dispensers;
2. Claimant has filed evidence supporting the requirement for the dispensers;

Reasonably necessary activities are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. (Cal. Code Regs., tit. 2, § 1183.7.) Desert Sands Unified School District ("Claimant") contends that the legislature intended that dispensers were essential for stocking and maintaining at all times feminine hygiene products and that the installation costs would be reimbursable. "The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as

Artiano Shinoff

Heather Halsey  
Executive Director  
Commission on State Mandates

September 18, 2019  
Page 2

***Re: Comments to Draft Expedited Proposed Parameters & Guidelines Decision 18-TC-01, Public School Restrooms: Feminine Hygiene Products***

several hundred dollars to as high as two to three thousand dollars. (emphasis added; Assembly Analysis September 6, 2017; attached) The legislative intent could not be clearer.

Claimant has filed substantial evidence in their test claim and supporting declarations that the dispensers were a critical cost for complying with the mandate in stocking and maintaining at all times feminine hygiene products supporting the requirement for the dispensers.

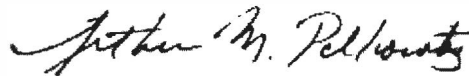
When the test claim was unanimously approved a Commission member voiced her support for reimbursement of the dispenser costs. (attached hearing transcript p.226-227.) Furthermore, there is no evidence in the record of a method other than dispensers for stocking and maintaining the feminine hygiene products.

### **Conclusion**

The use of the dispensers is a reasonably necessary activity necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. (2 CCR § 1183.7.) Installing dispensers is a reasonable, healthy, safe and effective method to satisfy the statute's requirement "to stock at least 50 percent of the school's restrooms with feminine hygiene products at all times." (Education Code Section 35292.6.) Claimant has submitted substantial evidence that is included in the record of the one-time related costs of purchasing and installing dispensers for reimbursement.

### **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 information and belief.



Arthur M. Palkowitz  
Attorney for Claimant  
Desert Sands Unified School District

AMP:kaf

CONCURRENCE IN SENATE AMENDMENTS

AB 10 (Cristina Garcia)

As Amended September 1, 2017

Majority vote

ASSEMBLY: 68-6 (May 31, 2017) SENATE: 39-0 (September 6, 2017)

---

Original Committee Reference: **ED**.

**SUMMARY:** Requires a public school serving students in any of grades 6 to 12, that meets the 40% pupil poverty threshold required to operate a federal Title I schoolwide program, to stock at least 50% of the school's restrooms with feminine hygiene products at all times and to provide those products at no charge.

**The Senate amendments** specify that schools may not charge students for menstrual products and add co-authors.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- 1) One-time state reimbursable mandated costs, ranging from the millions to tens of millions of dollars in Proposition 98 General Fund, for the bill's requirement for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars.
- 2) Ongoing state reimbursable mandated costs, likely in the hundreds of thousands of dollars in Proposition 98 General Fund, to stock the dispensers at no charge.

**COMMENTS:** According to the author, "Feminine hygiene products are a necessity for the health, well-being, and full participation for those who menstruate. No person who menstruates should ever need to worry about access to tampons or sanitary pads. These products are medical necessities for half of our population and as a state California should not wait to lead the country to increase access to these products."

**Analysis Prepared by:** Debbie Look / ED. / (916) 319-2087

FN: 0001774

1       We believe that it is intended to be part of it,  
2       based on the legislative history, and also the Senate  
3       Appropriation looking at that issue.

4       The code section that was amended states the  
5       feminine hygiene products shall be stocked in the  
6       restrooms. We believe that the dispensers are a  
7       reasonable method of doing that. The code section, on  
8       its face, does not say the feminine products will be  
9       placed there or laid down there or someone will  
10      personally distribute them. So we feel that it is  
11      appropriate that the dispensers be reimbursed.

12      And if the process is to have that done during the  
13      Parameters and Guidelines, we look forward to that  
14      opportunity.

15      CHAIRPERSON MILLER: I appreciate that. Thank you,  
16      sir.

17      With that, are there questions from members?

18      MEMBER OLSEN: I will move the staff  
19      recommendation.

20      CHAIRPERSON MILLER: Ms. Stowers, did you have a  
21      question?

22      MEMBER STOWERS: I will second that motion. But I  
23      want to make a comment as well. I just want to -- I  
24      appreciate the analysis, providing that these products  
25      are a part of the test claim. And I look forward to

20

1 reading the P&G and having, you know, a reasonableness  
2 to include the dispensers. Also looking forward, the  
3 overall cost should be decreased as we are looking to  
4 have these items to be excluded from sales tax. So  
5 thank you to everyone.

6 CHAIRPERSON MILLER: Great. Thank you,  
7 Ms. Stowers.

8 Any other questions?

9 MEMBER RAMIREZ: I just want to say --

10 CHAIRPERSON MILLER: Oh -- please.

11 MEMBER RAMIREZ: I just want to say, it's about  
12 time, as well.

13 (Laughter)

14 CHAIRPERSON MILLER: I appreciate that.

15 MS. GEANACOU: Yes, thank you from Finance.

16 We support the staff analysis, and we'll address  
17 any cost or reimbursable activities at the Parameters  
18 and Guidelines phase.

19 CHAIRPERSON MILLER: Great. I appreciate that.  
20 Thank you.

21 Ms. Olsen, did you have a comment?

22 MEMBER OLSEN: I am moving the recommendation with  
23 great pleasure.

24 MEMBER STOWERS: Second.

25 CHAIRPERSON MILLER: Moved by Ms. Olsen; seconded

21

### 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.

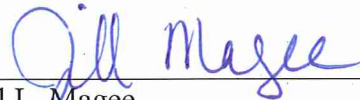
On September 19, 2019, I served the:

- **Claimant's Late Comments on the Proposed Decision and Parameters and Guidelines filed September 18, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 September 19, 2019 at Sacramento, California.



Jill L. Magee  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/13/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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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**RECEIVED**  
September 20, 2019  
**Commission on  
State Mandates**

Test Claim: Public School Restrooms

Feminine Hygiene Products

Claimants: Desert Sands Unified School District

Section: 6 Declaration – Jordan Aquino, Chief Business Officer, Desert Sands Unified School District

**LATE FILING**

**SECTION NUMBER: 6**  
**Heading: DECLARATION**

I, Jordan Aquino, Chief Business Officer, Desert Sands Unified School District, (“District”) declare as follows:

1. The information contained in my declaration is from my personal knowledge pertaining to the Feminine Hygiene Products program.
2. The new activities performed, or to be performed, to implement provisions of the new statute alleged to impose the reimbursable mandate, Assembly Bill No. 10; Statutes 2017, Chapter 687; Education Code Section 35292.6 include the following:
  - (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products;
  - (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools’ restrooms;
  - (iii) The cost of purchasing and installing dispensers in the schools’ restrooms;
  - (iv) The cost of stocking the schools’ restrooms with feminine hygiene products at all times.
3. Education Code section 35292.6, added by Statutes 2017, chapter 687 (AB 10), which requires certain Title I eligible public schools that maintain any combination of classes from grade 6 to grade 12, inclusive, to stock at all times and at no cost to pupils at least 50 percent of the school's restrooms with feminine hygiene products, which are defined as tampons and sanitary napkins.
4. In deciding on the method to comply with the mandated activities to stock the feminine hygiene products at all times in the school's restrooms with feminine hygiene products an objective was that the feminine hygiene products be secured to avoid the waste I experienced with toilet paper and towels. The dispensers require the handle to be turned releasing the feminine hygiene products one at a time discouraging pupils from turning the handle multiple times and receiving an excessive quantity of the products. Additionally, the dispensers are secure and have been proven to be effective in safely storing the feminine hygiene products.

Test Claim: Public School Restrooms

Feminine Hygiene Products

Claimants: Desert Sands Unified School District

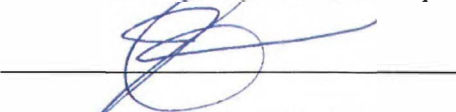
Section: 6 Declaration – Jordan Aquino, Chief Business Officer, Desert Sands Unified School District

5. Additionally, the feminine hygiene products had to be readily available to avoid the need for female students to request from District staff the feminine hygiene products. A delivery method that involved tokens to access the feminine hygiene products was not an effective option.

6. After considering the options of self-storage plastic drawers and toilet tank storage baskets installing dispensers in the school restrooms was the most reasonable, efficient and economic method for stocking and maintaining the feminine hygiene products in the school restrooms.

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 information and belief and I am authorized and competent to do so.

Dated: September 20, 2019



JORDAN AQUINO, CHIEF BUSINESS OFFICER  
DESERT SANDS UNIFIED SCHOOL DISTRICT

**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 September 20, 2019, I served the:

- **Notice of Claimant's Late-Filed Declaration and Postponement of Hearing issued September 20, 2019**
- **Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District filed September 20, 2019**

*Public School Restrooms: Feminine Hygiene Products, 18-TC-01*  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 September 20, 2019 at Sacramento, California.

  
\_\_\_\_\_  
Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/13/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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STATE of CALIFORNIA  
**COMMISSION ON STATE  
MANDATES**



October 2, 2019

Mr. Arthur Palkowitz  
Artiano Shinoff  
2488 Historic Decatur Road, Suite 200  
San Diego, CA 92106

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

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

**Re: Revised Draft Proposed Decision and Parameters and Guidelines, Schedule for Comments, and Notice of Hearing**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

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

**Written Comments**

Written comments may be filed on the Draft Proposed Decision and Proposed Parameters and Guidelines by **October 18, 2019**.<sup>1</sup> Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>2</sup>

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

<sup>1</sup> Note that this is not a 3-week comment period because the Commission's regulations do not provide for a comment period at all on a revised draft and a longer comment period would require a postponement to the January Commission meeting.

<sup>2</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Palkowitz and Ms. Sidarous  
October 2, 2019  
Page 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.

### Hearing

This matter is set for hearing on **Friday, November 22, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about November 8, 2019.

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. Staff will no longer be sending reminder emails. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately 2 weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

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 --**

### **REVISED DRAFT PROPOSED DECISION AND PARAMETERS AND GUIDELINES**

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

The period of reimbursement begins January 1, 2018.

Desert Sands Unified School District, Claimant

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#### **EXECUTIVE SUMMARY**

##### **I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (AB 10), which requires certain Title I-eligible public schools that maintain any combination of classes from grade 6 to grade 12, inclusive, to stock at all times and at no cost to pupils at least 50 percent of the school's restrooms with feminine hygiene products, which are defined as tampons and sanitary napkins.

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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, for such schools to:

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

## **II. Procedural History**

On May 24, 2019, the Commission adopted the Decision approving the Test Claim.<sup>1</sup> On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>2</sup> On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)<sup>3</sup> filed substantive comments on the Draft Expedited Parameters and Guidelines.<sup>4</sup> On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>5</sup> On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.<sup>6</sup> On June 18, 2019, the Department of Finance (Finance) filed late substantive comments on the Draft Expedited Parameters and Guidelines.<sup>7</sup> On June 19, 2019, the claimant filed rebuttal comments.<sup>8</sup> On June 25, 2019, Finance filed revised late comments on the Draft Expedited Parameters and Guidelines to replace the June 19 comments which were inadvertently filed without being certified and signed under penalty of perjury.<sup>9</sup> On June 26, 2019, the claimant filed rebuttal comments.<sup>10</sup> On July 17, 2019, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.<sup>11</sup> On August 1, 2019, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines.<sup>12</sup> On September 11, 2019, Commission staff issued the Proposed Decision and Parameters and Guidelines for the September 27, 2019 hearing.<sup>13</sup> On September 18, 2019, the

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<sup>1</sup> Exhibit A, Test Claim Decision.

<sup>2</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>3</sup> California Code of Regulations, title 2, section 1181.2(j) defines "Interested person" as "any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter."

<sup>4</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

<sup>5</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>6</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>7</sup> Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>8</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>9</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>10</sup> Exhibit I, Claimant's Rebuttal Comments.

<sup>11</sup> Exhibit J, Draft Proposed Decision and Parameters and Guidelines.

<sup>12</sup> Exhibit K, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

<sup>13</sup> Exhibit L, Proposed Decision and Parameters and Guidelines.



claimant filed late comments on the Proposed Decision and Parameters and Guidelines.<sup>14</sup> On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District.<sup>15</sup> This matter was then postponed to the Commission's November 22, 2019 hearing in order to prepare a Revised Draft Proposed Decision and Parameters and Guidelines for comment.

### **III. Discussion**

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

Commission staff proposes to clarify Section II. of the Proposed Parameters and Guidelines addressing "Eligible Claimants" as follows:

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district's schools that meet the following criteria:

- 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:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

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

Because the test claim statute, Statutes 2017, chapter 687, became effective on January 1, 2018, the period of reimbursement begins January 1, 2018.

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

1. Requests limiting the restrooms required to be stocked with feminine hygiene products to "pupil" restrooms or to "girl's" restrooms are inconsistent with the test claim statute and are, therefore, denied.

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<sup>14</sup> Exhibit M, Claimant's Late Comments on the Proposed Decision and Parameters and Guidelines.

<sup>15</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

For the approved activity to stock 50 percent of school's restrooms with feminine hygiene products, Finance requests that the activity be limited to "pupil" restrooms.<sup>16</sup> Interested person, Reynolds Consulting Group, Inc., also urges the Commission to state the reimbursable activity as "[s]tock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils."<sup>17</sup>

These requests are not consistent with the test claim statute, and are denied.

2. In order to support the actual costs incurred for labor and materials, Section IV. A. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity, the number of restrooms in each of these schools, and each school's total enrollment of female pupils in grades 6 to 12 in the claim year.

For the approved activity to stock 50 percent of school's restrooms with feminine hygiene products, the claimant proposes to add in Section IV. of the Parameters and Guidelines specific language that employee time and cost of materials is reimbursable.<sup>18</sup>

The "boilerplate" language in Section V. of the Parameters and Guidelines for direct cost reporting already authorizes reimbursement for the actual costs of employee time and materials for the approved reimbursable activity.<sup>19</sup> Thus, the claimant's proposal to add the same information in Section IV. of the Parameters and Guidelines is not necessary.

During the test claim proceedings, and again in comments on the Draft Expedited Parameters and Guidelines, Finance has argued that "the Claimant has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school,"<sup>20</sup> and that "the required costs may be overstated in the test claim."<sup>21</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable.<sup>22</sup>

Staff agrees that to support the actual labor and materials costs incurred as a result of this mandate, eligible claimants must identify the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school's total enrollment of female pupils in grades 6 to 12 in the claim year, in order to show the relationship between the

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<sup>16</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>17</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>18</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>19</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>20</sup> Exhibit X, Finance's Comments on the Draft Proposed Decision, page 1; Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>21</sup> Exhibit X, Finance's Comments on the Test Claim, page 2.

<sup>22</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

reimbursable activity and the costs claimed. The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on the school's total enrollment of female pupils in grades 6 to 12 in the claim year. In addition, the identification of the schools in the reimbursement claim will make it easy to access information to determine whether those schools meet the two conditions of eligibility for this program. Therefore, Section IV.A. of the Parameters and Guidelines is revised to reflect this clarification as follows:

Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school's total enrollment of female pupils in grades 6 to 12 in the claim year. The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on each school's total enrollment of female pupils in grades 6 to 12 in the claim year.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

3. The request by interested person, Reynold's Consulting Group, Inc., to allow a time study to support the labor costs claimed is denied because, although the Commission is authorized to adopt a reasonable reimbursement methodology (RRM), the Government Code does not authorize the Commission to approve the use of a time study for claiming actual costs.

Interested person, Reynolds Consulting Group, Inc., requests "[t]he use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward."<sup>23</sup>

Although the Controller has allowed time studies in limited circumstances under the Controller's audit authority,<sup>24</sup> the Government Code does not provide the Commission any authority to authorize reimbursement for actual costs based on a time study and, thus, the request is denied. The Government Code only provides two methods of reimbursement: actual cost claiming, and claiming based on a proposed reasonable reimbursement methodology (RRM).<sup>25</sup> An RRM can be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.<sup>26</sup> The

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<sup>23</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>24</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>25</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>26</sup> Government Code, section 17518.5.

Commission, however, is not authorized to develop an RRM,<sup>27</sup> and the parties have not filed a request to adopt an RRM in this case.

4. The proposed activities to purchase and install a sufficient number of suitable dispensers, or repair or retrofit existing dispensers, for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms are supported by substantial evidence in the record, and are, therefore, reasonably necessary to comply with the mandate.

The claimant requests that the Commission approve “purchasing and installation of dispensers” as reasonably necessary to comply with the mandate.<sup>28</sup> Interested person, Reynolds Consulting Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost of dispensers and any repairs/replacements of dispensers.<sup>29</sup>

On September 20, 2019, the claimant filed a declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, explaining why the purchase and installation of dispensers is necessary to comply with the mandate. The declaration explains that free release dispensers allow schools to stock feminine hygiene products in “the most reasonable, efficient, and economic” way, which makes the product readily available to students free of charge, but also helps to avoid waste as the dispensers allow the products to be released one at a time.<sup>30</sup>

Thus, based on the evidence in the record, staff finds that using appropriately configured dispensers is reasonably necessary for the performance of the state-mandated activity. However, some schools may already be equipped with a sufficient number of suitable dispensers in their restrooms to comply with the mandate and, thus, would not be mandated to incur increased costs to buy new dispensers. In addition, based on information publicly available, 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 of replacing the existing dispensers.<sup>31</sup> Under these circumstances, it would only be necessary to repair or

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<sup>27</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

<sup>28</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

<sup>29</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>30</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

<sup>31</sup> California Code of Regulations, title 2, section 1187.5(c). For example, some colleges have successfully retrofitted existing dispensers in order to provide students with free feminine hygiene products. See e.g. Exhibit X, Project Tampon Overview, Brown University UCS, page 6 (stating that since 2018 all dispensers in the school’s women’s and gender inclusive bathrooms have been converted to dispense at no cost to students), <http://www.brownuucs.org/project-tampon>. In addition, some dispensers have a universal coin mechanism that allows switching between coin and free (no coin) operation and some dispensers may be retrofitted to operate in free (no-coin) release mode with the help of a conversion kit.

retrofit the dispensers to comply with the mandate, and would not be necessary to incur increased costs to buy all new dispensers.

Thus, the proposed activity to purchase and install new dispensers is only reasonably necessary to comply with the mandate for a school that does not already have a sufficient number of suitable dispensers or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate to stock 50 percent of the school's restrooms with feminine hygiene products at all times. The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times may be determined based on the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

Accordingly, section IV. B. of the Parameters and Guidelines provides as follows:

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

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

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

5. The proposed activity to develop policies and procedures is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity.<sup>32</sup>

The claimant's Test Claim included a request for reimbursement to develop a school's policies and procedures, which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited

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See e.g., Exhibit X, ASI 0468-2 Napkin/Tampon Vendor Description, <https://americanspecialties.com/product/dual-napkin-tampon-vendor-semi-recessed-25%C2%A2-50%C2%A2-or-free-operation-0468-2/> (accessed on September 23, 2019); Exhibit X, Recessed Napkin / Tampon Vendor Description, Bobrick, page 2 (stating that part No. 3706-250 should be ordered for a free vend conversion kit to satisfy free menstrual product requirements in schools), [www.bobrick.com/products/washroom-accessories/restroom-accessories-catalog/sanitary-napkin-tampon-vendors/product/de-b-4706-25/](http://www.bobrick.com/products/washroom-accessories/restroom-accessories-catalog/sanitary-napkin-tampon-vendors/product/de-b-4706-25/) (accessed on September 20, 2019).

<sup>32</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

Parameters and Guidelines.<sup>33</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objected to the exclusion of costs for development of a school’s policies and procedures, but again did not file any evidence to show why the proposed activity is necessary for the performance of the state-mandated activity.<sup>34</sup> To support its requests for the cost of policies and procedures the claimant submitted two declarations from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, both stating only that the “new activities performed, or to be performed” to implement the mandate include “[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products”,<sup>35</sup> and identifying the cost at \$347.16 in the 2017-2018 fiscal year, and estimating further costs at \$191.40 for 2018-2019 fiscal year.<sup>36</sup>

This activity is denied because the claimant has not provided substantial evidence in the record to support a finding that developing policies and procedures is reasonably necessary to comply with the mandate but has instead only provided evidence that it has incurred costs to perform these activities.

6. The proposed activity to train personnel is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

The claimant’s Test Claim included a request for reimbursement to “train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district’s restrooms,” and included a declaration of the costs incurred to provide the training.<sup>37</sup> Training was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>38</sup> The claimant did not propose training as a reasonably necessary activity in response to the Draft Expedited Parameters and Guidelines, or Draft Proposed Decision and Proposed Parameters and Guidelines.

On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, which appears to reassert claimant’s request for the

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<sup>33</sup> Exhibit X, Test Claim, pages 11, 21. See also Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>34</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>35</sup> Exhibit X, Test Claim, page 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018); Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

<sup>36</sup> Exhibit X, Test Claim, pages 20, 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>37</sup> Exhibit X, Test Claim, pages 20-23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>38</sup> Exhibit X, Test Claim, pages 11-12, 13.

cost of training.<sup>39</sup> However, this declaration simply reiterates that the “new activities performed, or to be performed” to implement the mandate include activity to “[t]rain certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools’ restrooms,” but provides no explanation of why training is reasonably necessary to comply with the mandate.<sup>40</sup>

This activity is denied because the claimant has not provided substantial evidence in the record to support a finding that training of personnel is reasonably necessary to comply with the mandate.

#### **D. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, fixed assets, and contracted services. However, travel and training costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activity or submit substantial evidence to support such a request.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

#### **IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning January 1, 2018.

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

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<sup>39</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1 (stating that the new activities to implement the mandate by the claimant include (i) developing and implementation of internal policies, training, and procedures, and (ii) training personnel to administer the availability of feminine hygiene products in the school’s restrooms).

<sup>40</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Education Code Section 35292.6

Statutes 2017, Chapter 687 (AB 10)

The period of reimbursement begins  
January 1, 2018.

Case No.: 18-TC-01

*Public School Restrooms: Feminine Hygiene  
Products*

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

*(Adopted November 22, 2019)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on November 22, 2019. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified/rejected] the Decision and Parameters and Guidelines by a vote of [vote count will be in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	



## **I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from Education Code section 35292.6, added by Statutes 2017, chapter 687 (AB 10), which requires certain Title I-eligible public schools that maintain any combination of classes from grade 6 to grade 12, inclusive, to stock at all times and at no cost to pupils at least 50 percent of the school's restrooms with feminine hygiene products, which are defined as tampons and sanitary napkins.

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the Test Claim for school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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, for such schools to:

- Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

## **II. Procedural History**

On May 24, 2019, the Commission adopted the Test Claim Decision.<sup>41</sup> On May 24, 2019, Commission staff issued the Draft Expedited Parameters and Guidelines.<sup>42</sup> On June 11, 2019, Reynolds Consulting Group, Inc., (interested person)<sup>43</sup> filed comments on the Draft Expedited Parameters and Guidelines.<sup>44</sup> On June 14, 2019, the claimant filed comments on the Draft Expedited Parameters and Guidelines.<sup>45</sup> On June 14, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Parameters and Guidelines, recommending no changes.<sup>46</sup> On June 18, 2019, the Department of Finance (Finance) filed late comments on the Draft Expedited Parameters and Guidelines.<sup>47</sup> On June 19, 2019, the claimant filed rebuttal

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<sup>41</sup> Exhibit A, Test Claim Decision.

<sup>42</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>43</sup> California Code of Regulations, title 2, section 1181.2(j) defines "Interested person" as "any individual, local agency, school district, state agency, corporation, partnership, association, or other type of entity, who has an interest in a matter before the Commission, but is not a party or interested party with respect to that matter."

<sup>44</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines.

<sup>45</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines.

<sup>46</sup> Exhibit E, Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>47</sup> Exhibit F, Finance's Late Comments on the Draft Expedited Parameters and Guidelines.

comments.<sup>48</sup> On June 25, 2019, Finance filed revised late comments on the Draft Expedited Parameters and Guidelines to replace the June 19 comments which were inadvertently filed without being certified and signed under penalty of perjury.<sup>49</sup> On June 26, 2019, the claimant filed rebuttal comments.<sup>50</sup> On July 17, 2019, Commission staff issued the Draft Proposed Decision and Parameters and Guidelines.<sup>51</sup> On August 1, 2019, the claimant filed comments on the Draft Proposed Decision and Parameters and Guidelines.<sup>52</sup> On September 11, 2019, Commission staff issued the Proposed Decision and Parameters and Guidelines for the September 27, 2019 hearing.<sup>53</sup> On September 18, 2019, the claimant filed late comments on the Proposed Decision and Parameters and Guidelines.<sup>54</sup> On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District.<sup>55</sup> This matter was then postponed to the Commission's November 22, 2019 hearing in order to prepare a Revised Draft Proposed Decision and Parameters and Guidelines for comment.

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

#### **A. Desert Sands Unified School District**

The claimant's comments on the Draft Expedited Parameters and Guidelines propose several changes to the Proposed Parameters and Guidelines which include reimbursement for purchasing and installing dispensers, and for developing policies and procedures.<sup>56</sup>

The claimant proposes the following amendments to Section IV. of the Proposed Parameters and Guidelines describing reimbursable activities (with amendments in bold italics):

1. Stock (***employee time and cost of materials***) 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.) Reimbursement is not required to stock more than 50 percent

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<sup>48</sup> Exhibit G, Claimant's Rebuttal Comments.

<sup>49</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>50</sup> Exhibit I, Claimant's Rebuttal Comments.

<sup>51</sup> Exhibit J, Draft Proposed Decision and Parameters and Guidelines.

<sup>52</sup> Exhibit K, Claimant's Comments on the Draft Proposed Decision and Parameters and Guidelines.

<sup>53</sup> Exhibit L, Proposed Decision and Parameters and Guidelines.

<sup>54</sup> Exhibit M, Claimant's Late Comments on the Proposed Decision and Parameters and Guidelines.

<sup>55</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

<sup>56</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>57</sup>

2. Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.<sup>58</sup>

The claimant's proposed language does not address the claimant's request for reimbursement to develop policies and procedures referred to on page 1 of its comments.<sup>59</sup>

On June 19, 2019, the claimant filed rebuttal comments objecting to comments filed by Finance as untimely and not signed under penalty of perjury and to comments filed by the Controller as not signed under penalty of perjury.<sup>60</sup> The claimant requests that the comments be stricken from the record.<sup>61</sup> On June 26, 2019, the claimant filed rebuttal comments objecting to Finance's revised late comments as untimely and not signed under penalty of perjury and requesting that these comments be stricken from the record.<sup>62</sup>

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<sup>57</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>58</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>59</sup> In addition, the claimant's comments and rebuttal comments on the Draft Expedited Parameters and Guidelines do not request reimbursement for training, which was requested in the Test Claim. (Exhibit X, Test Claim, pages 11-12.) The Commission's Test Claim Decision notes that "training" may be proposed for inclusion in the Parameters and Guidelines if it is supported by evidence in the record showing it is "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. (Exhibit A, Test Claim Decision, pages 15-16.)

<sup>60</sup> Exhibit G, Claimant's Rebuttal Comments, page 1.

<sup>61</sup> Exhibit G, Claimant's Rebuttal Comments, page 1.

<sup>62</sup> Exhibit I, Claimant's Rebuttal Comments. Finance's comments and revised comments were not filed within 21 days of service of the Draft Expedited Parameters and Guidelines as required and were, therefore, late. (Cal. Code Regs., tit. 2, 1183.9(b).) However, written comments received at least 15 days in advance of the meeting [i.e. late filings], shall be included in the Commission's meeting binders. (Cal. Code Regs., tit. 2, § 1181.10.) Several claimants have asserted, in a number of matters, that late comments should not be considered in Commission decisions as is permitted by the Commission's regulations (See Cal. Code Regs., tit. 2, §§ 1183.6(d), 1183.13(c), 1183.17(k), 1184.1(k), 1185.7(e), 1190.5(a)(3)(A)), but given that late filings, up to 15 days before the hearing, shall be included in the Commission's meeting binders, that the same testimony may be submitted at the hearing, and that this Draft Proposed Decision had not yet been issued at the time that the late comments were filed, staff is including these comments in the analysis to ease the decision making process for the Commission Members. Furthermore, contrary to the claimant's assertion, Finance's revised comments were signed under penalty of perjury. (See Exhibit H, page 3.) As to the Controller's comments, they were not signed under penalty of perjury, as required, but also do not contain any substance other than the Controller's agreement with the Draft Expedited Parameters and Guidelines. The claimant is

On August 1, 2019, the claimant filed comments on the Draft Proposed Decision Parameters and Guidelines, arguing that proposed activities to purchase and install dispensers for feminine hygiene products are supported by substantial evidence in the record, in the form of “legislative history acknowledging that the mandate would result in school districts incurring costs to purchase and install dispensers” and the claimant’s evidence supporting these costs; and asserting that “Commission staff has ignored the Commission members statements supporting the reimbursement of the dispenser costs at the Commission hearing when the test claim was approved.”<sup>63,64</sup> On September 18, 2019, the claimant filed late comments on the Proposed Decision and Parameters and Guidelines, reiterating the same arguments.<sup>65</sup>

On September 20, 2019, the claimant filed Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, explaining why the feminine hygiene products dispensers purchased by the claimant were necessary to comply with the mandated activities.<sup>66</sup> The declaration also appears to reassert claimant’s request for the cost of training, which was originally requested by the claimant in the Test Claim and denied by the Commission in the Test Claim Decision.<sup>67</sup>

## **B. State Controller’s Office**

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correct, however, that if assertions of fact are made which are not supported by evidence in the record, they will not be considered. (Cal. Code Regs., tit. 2, §§ 1183.7, 1187.5.).

<sup>63</sup> The claimant appears to refer to the discussion that took place at the test claim hearing in response to the claimant’s request that the Commission approve the activity to purchase and install dispensers. The claimant was advised that this activity was not approved in the Test Claim Decision because it is not required by the plain language of the test claim statute; but that it could be proposed for inclusion in the Parameters and Guidelines as a reasonably necessary activity, to be considered in a separate proceeding. Commission member Stowers then commented that she would be looking forward to reading the Parameters and Guidelines and having “a reasonableness to include the dispensers.” Exhibit X, CSM Public Hearing (May 24, 2019), transcript of proceedings, pages 18-21.

<sup>64</sup> Exhibit K, Claimant’s Comments on the Draft Proposed Decision and Parameters and Guidelines, page 1.

<sup>65</sup> Exhibit M, Claimant’s Late Comments on the Proposed Decision and Parameters and Guidelines.

<sup>66</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

<sup>67</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1 (stating that the new activities to implement the mandate by the claimant include (i) developing and implementation of internal policies, training, and procedures, and (ii) training personnel to administer the availability of feminine hygiene products in the school’s restrooms).

On June 14, 2019, the Controller filed comments on the Draft Expedited Parameters and Guidelines and recommends “no changes.”<sup>68</sup> The Controller did not comment on the Draft Proposed Decision and Parameters and Guidelines.

### **C. Department of Finance**

Finance filed late comments on the Draft Expedited Parameters and Guidelines expressing several concerns and proposing a change.<sup>69</sup>

First, Finance states that it “only supports the cost of the feminine hygiene products as reimbursable costs, based on the plain language of the test claim statute” and that “[a]ll other activities, such as the cost and installation of dispensers, training of personnel, and developing policies and procedures, must be supported by evidence showing that they are ‘reasonably necessary for the performance of the state-mandated program.’”<sup>70</sup> Finance reiterates its position that, based on the plain language of the test claim statute, the activities of training personnel and developing policies and procedures are not reasonably necessary to implement the mandate.<sup>71</sup> Finance further states that only actual costs for the state-mandated activity, that are traceable and supported by source documents that show the validity of the costs, are eligible for reimbursement.<sup>72</sup>

Finally, Finance continues to dispute the cost estimates submitted by the claimant with the Test Claim and notes the following additional concerns:

- As stated in the Senate Floor analysis, and emphasized in the Commission’s decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.
- The claimant purchased 115 dispensers for seven eligible schools and purchased an additional 12 in the second year of the mandate. To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states “50 percent of the school’s restrooms” shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to

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<sup>68</sup> Exhibit E, Controller’s Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>69</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines.

<sup>70</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>71</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>72</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.<sup>73</sup>

Finance did not comment on the Draft Proposed Decision and Parameters and Guidelines.

#### **D. Interested Person, Reynolds Consulting Group, Inc.**

In its comments on the Draft Expedited Parameters and Guidelines, the Reynolds Consulting Group, Inc., recommends that the Commission address the following issues in relation to the reimbursable activities:

- The use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward.
- The cost of the feminine hygiene dispensers as well as any repairs/replacements of dispensers from January 1, 2018, and forward.
- Stock 50 percent of **the girl's restrooms** with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.<sup>74</sup>

No comments have been filed by the Reynolds Consulting Group, Inc., on the Draft Proposed Decision and Parameters and Guidelines.

#### **IV. Discussion**

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

In the Test Claim Decision, the Commission found that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that (1) maintain any combination of classes from grade 6 to grade 12, inclusive; *and* (2) 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.<sup>75</sup>

The test claim statute states:

A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets 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 shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.<sup>76</sup>

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<sup>73</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>74</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>75</sup> Exhibit A, Test Claim Decision, page 21.

<sup>76</sup> Education Code section 35292.6(a).

The Commission found that the requirement that a school 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” means that the school must meet two conditions:

- 1) The school is eligible for Title I, Part A funds by either servicing an eligible school attendance area<sup>77</sup> or be a participating Title I, Part A school,<sup>78</sup> *and*
- 2) Meet the second test identified in section 6314(a)(1)(A),<sup>79</sup> requiring that not less than 40 percent of the children enrolled in the school are from low-income families.<sup>80</sup>

Any school that meets only one of the above conditions is not required by the test claim statute to perform the mandated activities.

The term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole.<sup>81</sup> This means, for example, if a school district has 80 percent of children from low-income families, then the costs for a school in that district with 75 percent of children from low-income families would not be reimbursable because that percentage is not “at least as high as the percentage of children from low-income families served by the local educational agency as a whole,” and the school, therefore, does not meet the first condition described above. Conversely, in a district with 38 percent of children from low-income families, the costs for a school in that district with 39 percent of children from low-income families would not be reimbursable because, although it meets the first condition, it does not meet the second condition.

Accordingly, Section II. of the Parameters and Guidelines addressing the “Eligible Claimants,” states the following:

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district’s schools that meet the following criteria:

- Maintain any combination of classes from grade 6 to grade 12, inclusive;  
*and*

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<sup>77</sup> The term “eligible school attendance area” means a school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole. 20 United States Code, section 6313(a).

<sup>78</sup> See 20 United States Code, section 6314(a)(1)(A); 34 Code of Federal Regulations, section 200.25(b)(1)(i).

<sup>79</sup> See also, 34 Code of Federal Regulations, section 200.25(b)(1)(ii)(B).

<sup>80</sup> Exhibit A, Test Claim Decision, pages 14-15.

<sup>81</sup> 20 United States Code, section 6313(a).

- 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:
  - 1) the school is eligible for Title I, Part A funds, by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

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

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687, the test claim statute that imposes the mandate, became effective on January 1, 2018. Therefore, the period of reimbursement begins January 1, 2018.

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

The parties have filed comments addressing the scope of the reimbursable activities, and the claimant and the interested person comments request reimbursement for activities alleged to be reasonably necessary to comply with the mandate.

The comments are addressed below.

1. Requests limiting the restrooms required to be stocked with feminine hygiene products to “pupil” restrooms or to “girl’s” restrooms are inconsistent with the test claim statute and are, therefore, denied.

For the approved activity to stock 50 percent of school’s restrooms with feminine hygiene products, Finance requests that the activity be limited to “pupil” restrooms as follows:

As stated in the Senate Floor analysis, and emphasized in the Commission's decision, the intent of the test claim statute is to provide female pupils with access to free feminine hygiene products (defined only as tampons and sanitary napkins). The reimbursable activities should specify pupil restrooms, not all restrooms, in line with the intent of the test claim statute.<sup>82</sup>

Interested person, Reynolds Consulting Group, Inc. also urges the Commission to consider that the reimbursable activity be stated to “[s]tock 50 percent of **the girl's restrooms** with feminine

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<sup>82</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.



hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.”<sup>83</sup>

These requests are not consistent with the test claim statute. The activity approved by the Commission tracks the statutory language in Education Code section 35292.6. The plain language of the test claim statute states that a public school required to comply with the mandate “shall stock at least *50 percent of the school's restrooms* with feminine hygiene products at all times.”<sup>84</sup> In addition, CDE’s K-12 Toilet Requirement Summary states that the California Plumbing Code does not require specific toilets for staff and students, and, although CDE recommends that separate toilets be provided for staff for safety and liability concerns, some schools may not have separate restrooms for pupils and staff.<sup>85</sup> Furthermore, schools may have single occupancy restrooms designated as all-gender toilet facilities. Thus, limiting the restrooms required to be stocked with feminine hygiene products to only “pupil” restrooms or to “girls” restrooms is not consistent with the plain language of the test claim statute.

Accordingly, these requests are denied.

2. In order to support the actual costs incurred for labor and materials, Section IV. A. of the Parameters and Guidelines is revised to require that claimants identify the schools required to comply with the mandated activity, the number of restrooms in each of these schools, and each school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

For the approved activity to stock 50 percent of school’s restrooms with feminine hygiene products, the claimant proposes to add in Section IV. of the Parameters and Guidelines specific language that employee time and cost of materials is reimbursable (in bold and italic):

Stock (***employee time and cost of materials***) 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

Reimbursement is not required to stock more than 50 percent of the school’s restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins).<sup>86</sup>

The “boilerplate” language in Section V. of the Parameters and Guidelines for direct cost reporting already authorizes reimbursement for the actual costs of employee time and materials for the approved reimbursable activity, as follows:

The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

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<sup>83</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>84</sup> Education Code, section 35292.6(a).

<sup>85</sup> Exhibit X, CDE, K-12 Toilet Requirement Summary, <https://www.cde.ca.gov/ls/fa/sf/toiletrequire.asp> (accessed on July 8, 2019).

<sup>86</sup> Exhibit D, Claimant’s Comments on the Draft Expedited Parameters and Guidelines, page 2.

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

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.<sup>87</sup>

Thus, the claimant's proposal to add the same information in Section IV. of the Parameters and Guidelines is not necessary.

However, in comments on the Draft Expedited Parameters and Guidelines, Finance continues to dispute the claimant's cost estimates for labor and materials and reiterates that "only actual costs—those incurred to implement the mandated activity— are eligible for mandated cost reimbursement," and that these "costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities."<sup>88</sup> During the test claim proceedings, and again in comments on the Draft Expedited Parameters and Guidelines, Finance argued that "the Claimant has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school,"<sup>89</sup> and that "the required costs may be overstated in the test claim."<sup>90</sup> Thus, Finance has requested the number of restrooms at each eligible school to determine if the costs claimed are reasonable:

To determine the reasonableness of the cost estimate, Finance has requested the number of restrooms at each eligible school. The test claim statute states "50 percent of the school's restrooms" shall be stocked with feminine hygiene products, which necessitates information on the number of restrooms at each eligible school to determine whether the claimant is meeting or exceeding the mandated program. The number of restrooms is not available on the school's websites.<sup>91</sup>

Section IV. of the Parameters and Guidelines contains the following boilerplate language:

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<sup>87</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 6.

<sup>88</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, pages 1-2.

<sup>89</sup> Exhibit X, Finance's Comments on the Draft Proposed Decision, page 1; Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>90</sup> Exhibit X, Finance's Comments on the Test Claim, page 2.

<sup>91</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>92</sup>

The Commission agrees, however, that to support the actual labor and materials costs incurred as a result of this mandate, eligible claimants must identify the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school's total enrollment of female pupils in grades 6 to 12 in the claim year, in order to show the relationship between the reimbursable activity and the costs claimed. The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on the total number of restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year. In addition, the identification of the schools in the reimbursement claim will make it easy to access information to determine whether those schools meet the two conditions of eligibility for this program.

Thus, Section IV. A. of the Parameters and Guidelines is revised to reflect this clarification as follows:

- A. Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity, the number of restrooms in each of these schools, and each school's total enrollment of female pupils in grades 6 to 12 in the claim year. The sufficient amount of tampons and sanitary napkins necessary to comply with the mandate may be determined based on the total enrollment of female pupils in grades 6 to 12 in the claim year.

***Reimbursement is not required to stock more than 50 percent of the school's restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

3. The request by interested person, Reynold's Consulting Group, Inc., to allow a time study to support the labor costs claimed is denied because, although the Commission is authorized to adopt a reasonable reimbursement methodology (RRM), the Government Code does not authorize the Commission to approve the use of a time study for claiming actual costs.

Interested person, Reynolds Consulting Group, Inc., requests "[t]he use of a time-study for labor costs to meet the mandate requirements beginning January 1, 2018, and forward."<sup>93</sup>

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<sup>92</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 5.

<sup>93</sup> Exhibit C, Interested Person's (Reynolds Consulting Group, Inc.'s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

Although the Controller has allowed time studies in limited circumstances under the Controller's audit authority,<sup>94</sup> the Government Code does not provide the Commission any authority to authorize reimbursement for actual costs based on a time study.

The Government Code only provides two methods of reimbursement: actual cost claiming, and claiming based on a proposed reasonable reimbursement methodology (RRM).<sup>95</sup> An RRM can be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs.<sup>96</sup> The Commission, however, is not authorized to develop an RRM. Rather, an RRM may be developed by (1) Finance, (2) Controller, (3) an affected state agency, (4) a claimant, or (5) an interested party<sup>97</sup> and proposed to the Commission for inclusion in the Parameters and Guidelines.<sup>98</sup> The parties have not filed a request to adopt an RRM in this case.

Accordingly, the request is denied.

4. The activities to purchase and install a sufficient number of suitable dispensers, or repair or retrofit existing dispensers, for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school's restrooms are supported by substantial evidence in the record, and are, therefore, reasonably necessary to comply with the mandate.

The Test Claim Decision approved the following reimbursable state-mandated activity for school districts with qualifying schools:

- Stock 50 percent of the school's restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

The claimant requests that the Commission approve the following additional activity, which is quoted below, as reasonably necessary to comply with the mandate:

*Purchasing and installation of dispensers, (employee time and cost of materials) serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products.*<sup>99</sup>

Interested person, Reynolds Consulting Group, Inc., also requests that the Parameters and Guidelines authorize reimbursement for the cost "of the feminine hygiene dispensers as well as

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<sup>94</sup> Government Code sections 12410, 17558.5, and 17561.

<sup>95</sup> Government Code sections 17557(a) and (b), 17560(a), and 17518.5.

<sup>96</sup> Government Code, section 17518.5.

<sup>97</sup> California Code of Regulations, title 2, section 1181.2(i) defines "Interested party" as a local agency, school district, or state agency, with a beneficial interest in the matter.

<sup>98</sup> Government Code, section 17518.5; California Code of Regulations, title 2, section 1183.12.

<sup>99</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 2, emphasis in original.

any repairs/replacements of dispensers . . . .”<sup>100</sup>

Finance opposes these requests, stating that installation of dispensers is not mandated by the plain language of the test claim statute and that the claimant’s request for the additional activities to purchase and install dispensers must be supported by evidence showing that they are reasonably necessary for the performance of the state-mandated program.<sup>101</sup> Finance further notes that the claimant only showed that it purchased 115 dispensers in the first year and an additional 12 in the second year of the mandate, but that it did not specify the number of restrooms at each eligible school, making it impossible to determine the number of dispensers reasonably necessary to comply with the mandate.<sup>102</sup>

Pursuant to Government Code section 17557(a) and section 1183.7 of the Commission’s regulations, the Parameters and Guidelines must identify the activities mandated by the state and “may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program.” “Reasonably necessary activities” are defined in the Commission’s regulations as follows:

Reasonably necessary activities” are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.<sup>103</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-mandated activity in order for the Commission’s approval of that activity to be correct as a

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<sup>100</sup> Exhibit C, Interested Person’s (Reynolds Consulting Group, Inc.’s) Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>101</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>102</sup> Exhibit H, Finance’s Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 2.

<sup>103</sup> California Code of Regulations, title 2, section 1183.7(d).

matter of law.<sup>104</sup> “[I]nstant is insufficient to support a legal conclusion.”<sup>105</sup>

The claimant relies on the following documents to support the request for reimbursement to purchase and install dispensers. As part of the Test Claim filing, the claimant submitted a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, and invoices for the cost of the dispensers.<sup>106</sup> The declaration states that to implement provisions of the test claim statute in 2017-2018 fiscal year the claimant expended \$19,501.67 for the purchase and installation of 115 dispensers at the cost of \$156.74 per unit,<sup>107</sup> and that the claimant’s estimated 2018-2019 fiscal year costs include \$2,034.96 for the purchase and installation of 12 additional dispensers at \$169.58 per unit.<sup>108</sup> This did not show *why* the dispensers were necessary to comply with the mandate to stock 50 percent of the school’s restrooms with feminine hygiene products, but only that the claimant had incurred costs.

On September 20, 2019, the claimant filed another declaration of Jordan Aquino, explaining why the purchase and installation of dispensers is necessary to comply with the mandate.<sup>109</sup> The declaration states in relevant part the following:

[¶]

4. In deciding on the method to comply with the mandated activities to stock the feminine hygiene products at all times in the school's restrooms with feminine hygiene products an objective was that the feminine hygiene products be secured to avoid the waste I experienced with toilet paper and towels. The dispensers require the handle to be turned releasing the feminine hygiene products one at a time discouraging pupils from turning the handle multiple times and receiving an excessive quantity of the products. Additionally, the dispensers are secure and have been proven to be effective in safely storing the feminine hygiene products.
5. Additionally, the feminine hygiene products had to be readily available to avoid the need for female students to request from District staff the

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<sup>104</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5; Code of Civil Procedure section 1094.5(b), stating that “[a]buse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”

<sup>105</sup> *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1369 (concurring opinion).

<sup>106</sup> Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018), and 25-27 (Invoices).

<sup>107</sup> Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>108</sup> Exhibit X, Test Claim, pages 20-23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>109</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

feminine hygiene products. A delivery method that involved tokens to access the feminine hygiene products was not an effective option.

6. After considering the options of self-storage plastic drawers and toilet tank storage baskets[,] installing dispensers in the school restrooms was the most reasonable, efficient and economic method for stocking and maintaining the feminine hygiene products in the school restrooms.<sup>110</sup>

Thus, based on the evidence in the record, the Commission finds that using appropriately configured dispensers is reasonably necessary for the performance of the state-mandated activity.

However, some schools may already be equipped with a sufficient number of suitable dispensers in their restrooms to comply with the mandate and, thus, would not need to incur increased costs to buy new dispensers. In addition, based on information publicly available, 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.<sup>111</sup> 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.

Thus, the proposed activity to purchase and install new dispensers is only reasonably necessary to comply with the mandate for a school that does not already have a sufficient number of suitable dispensers or cannot repair or retrofit a sufficient number of existing dispensers to stock 50 percent of the school's restrooms with feminine hygiene products at all times and at no cost to pupils. The sufficient number of dispensers necessary to stock 50 percent of the restrooms with feminine hygiene products at all times may be determined based on the total number of the

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<sup>110</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District.

<sup>111</sup> California Code of Regulations, title 2, section 1187.5(c). For example, some colleges have successfully retrofitted existing dispensers in order to provide students with free feminine hygiene products. See e.g. Exhibit X, Project Tampon Overview, Brown University UCS, page 6 (stating that since 2018 all dispensers in the school's women's and gender inclusive bathrooms have been converted to dispense at no cost to students), <http://www.brownucs.org/project-tampon>. In addition, some dispensers have a universal coin mechanism that allows switching between coin and free (no coin) operation and some dispensers may be retrofitted to operate in free (no-coin) release mode with the help of a conversion kit. See e.g., Exhibit X, ASI 0468-2 Napkin/Tampon Vendor Description, <https://americanspecialties.com/product/dual-napkin-tampon-vendor-semi-recessed-25%C2%A2-50%C2%A2-or-free-operation-0468-2/> (accessed on September 23, 2019); Exhibit X, Recessed Napkin / Tampon Vendor Description, Bobrick, page 2 (stating that part No. 3706-250 should be ordered for a free vend conversion kit to satisfy free menstrual product requirements in schools), [www.bobrick.com/products/washroom-accessories/restroom-accessories-catalog/sanitary-napkin-tampon-vendors/product/de-b-4706-25/](http://www.bobrick.com/products/washroom-accessories/restroom-accessories-catalog/sanitary-napkin-tampon-vendors/product/de-b-4706-25/) (accessed on September 20, 2019).

school's restrooms and the school's total enrollment of female pupils in grades 6 to 12 in the claim year.

Accordingly, section IV. B. of the Parameters and Guidelines therefore provides as follows:

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

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

**Reimbursement to purchase and install new dispensers is required only to the extent that a school is not already equipped with a sufficient number of dispensers in their restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate (as stated in Section IV. C. of these Parameters and Guidelines).**

5. The proposed activity to develop policies and procedures is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

The claimant's Test Claim included a request for reimbursement to develop a school's policies and procedures, which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>112</sup> In comments on the Draft Expedited Parameters and Guidelines, the claimant objects to the exclusion of costs for policies and procedures as follows:

However, Commission Staff Draft Parameters & Guidelines has rejected the Test Claim requesting reimbursement of the new activities that included costs and labor related to the purchase and installation of dispensers *as well as school policies and procedures.*<sup>113</sup>

Finance opposes the inclusion of this activity in the Parameters and Guidelines, stating that based on the plain language of the test claim statute, developing policies and procedures is not reasonably necessary to implement the mandate.<sup>114</sup>

Any proposed reasonably necessary activity must be supported by substantial evidence in the record explaining why the proposed activity is necessary for the performance of the state-

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<sup>112</sup> Exhibit X, Test Claim, pages 11, 21.

<sup>113</sup> Exhibit D, Claimant's Comments on the Draft Expedited Parameters and Guidelines, page 1.

<sup>114</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.



mandated activity.<sup>115</sup>

The Commission denies the claimant's request for costs to develop policies and procedures because the claimant provides no evidence explaining why the proposed activity is reasonably necessary to comply with the mandate.

In the Test Claim, the claimant asserted that "[s]chool districts have incurred or will incur costs" for "[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products" to implement the alleged mandate.<sup>116</sup> In the rebuttal to Finance's comments on the Test Claim, the claimant further argued that the "Test Claim does not assert 'a massive overhaul of school policies and procedures,'" that the costs "are very reasonable based on the time estimated to perform the tasks," and that accordingly "claimant requests that the Test Claim activities be approved as a reimbursable mandate."<sup>117</sup> To support these requests the claimant submitted a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District identifying the cost of developing policies and procedures.<sup>118</sup> The declaration, however, only states that to implement provisions of the test claim statute in the 2017-2018 fiscal year, the claimant expended \$347.16 on "[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products" and that "[t]hese costs represent labor costs for Maintenance & Operations Director, Purchasing Director and Purchasing Buyer".<sup>119</sup> The declaration further states that the claimant's estimated 2018-2019 fiscal year costs for policies and procedures would amount to \$191.40, based on the previous year costs.<sup>120</sup> Thus, while the declaration provides evidence of costs, it does not provide any evidence that developing policies and procedures is reasonably necessary to comply with the mandate.

On September 20, 2019, the claimant filed another declaration of Jordan Aquino, reiterating that the "new activities performed, or to be performed" to implement the mandate include "[d]eveloping and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products[.]"<sup>121</sup> Mr. Aquino's declaration does not show *why* the activity to develop policies and procedures is reasonably necessary to

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<sup>115</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>116</sup> Exhibit X, Test Claim, page 11.

<sup>117</sup> Exhibit X, Claimant's Rebuttal to Finance's Comments on the Test Claim, pages 1-2.

<sup>118</sup> Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>119</sup> Exhibit X, Test Claim, page 20 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>120</sup> Exhibit X, Test Claim, page 22 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>121</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

comply with the mandate to stock 50 percent of the school's restrooms with feminine hygiene products.

The Commission did not approve the development of policies and procedures as a mandated activity in the Test Claim Decision because the activity is not required by the plain language of the test claim statute. For this activity to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and sections 1183.7 and 1187.5 of the Commission's regulations, the claimant must explain and support with substantial evidence in the record and in accordance with the Commission's regulations, why developing policies and procedures is reasonably necessary to comply with the mandate. The record does not contain this evidence.

Accordingly, the Commission denies this request.

6. The activity to train personnel is not supported by any evidence in the record to explain why the activity is reasonably necessary to comply with the mandate and is, therefore, denied.

The claimant's Test Claim included a request for reimbursement to "train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms," which was denied by the Commission as not required by the plain language of the test claim statute, and, accordingly, was not included in the text of the Draft Expedited Parameters and Guidelines.<sup>122</sup> The claimant did not propose training as a reasonably necessary activity in response to the Draft Expedited Parameters and Guidelines, or Draft Proposed Decision and Proposed Parameters and Guidelines.

However, on September 20, 2019, the claimant filed a declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, which states in relevant part that the new activities performed, or to be performed by the claimant to implement the mandate include the following:

- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools' restrooms[.]<sup>123</sup>

Finance generally opposed the inclusion of training in the Parameters and Guidelines, stating that based on the plain language of the test claim statute, training of personnel is not reasonably necessary to implement the mandate.<sup>124</sup>

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<sup>122</sup> Exhibit X, Test Claim, pages 11-12, 13.

<sup>123</sup> Exhibit N, Claimant's Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

<sup>124</sup> Exhibit H, Finance's Revised Late Comments on the Draft Expedited Parameters and Guidelines, page 1.

The Commission denies the claimant's request for the costs to train personnel because the claimant provides no evidence explaining why the proposed activity is reasonably necessary to comply with the mandate, as is required by law.<sup>125</sup>

In the Test Claim, the claimant asserted that “[s]chool districts have incurred or will incur costs” to “[t]rain certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms” to implement the alleged mandate.<sup>126</sup> In its rebuttal to Finance's comments on the Test Claim, the claimant further stated that with respect to labor costs for the period from January 1, 2018, through June 30, 2018 “the costs for training certificated, classified and other personnel to administer the availability of feminine hygiene products in the district restrooms is estimated for principals to be at 34.5 hours, and custodians 49.5 hours for a total of \$2,110.51,” and that in 2018-2019 fiscal year, “the costs for training certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms totals \$2,132.48, and concluded that these labor costs are “very reasonable based on the time estimated to perform the tasks,” and that accordingly “claimant requests that the Test Claim activities be approved as a reimbursable mandate.”<sup>127</sup>

As part of the Test Claim filing, the claimant submitted a declaration from Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District,<sup>128</sup> which states in relevant part that the “new activities performed, or to be performed” by the claimant to implement the mandate include activity to “[t]rain certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools' restrooms,” and identifies the cost of training at \$2,110.51 for 34 principals and 49 custodians at 0.5 hours each in 2017-2018 fiscal year,<sup>129</sup> and at \$2,132.48 for 34 principals and 49 custodians at 0.5 hours each in 2018-2019 fiscal year.<sup>130</sup> While this declaration provides evidence of costs, it does not provide any evidence explaining why training is reasonably necessary to comply with the mandate. Finally the declaration filed by the claimant on September 20, 2019 simply reiterates that the “new activities performed, or to be performed” to implement the mandate include activity to “[t]rain certificated, classified and other personnel to administer the availability of feminine hygiene

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<sup>125</sup> Government Code section 17559; California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

<sup>126</sup> Exhibit X, Test Claim, page 11.

<sup>127</sup> Exhibit X, Claimant's Rebuttal to Finance's Comments on the Test Claim, pages 1-2.

<sup>128</sup> Exhibit X, Test Claim, pages 20-24 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>129</sup> Exhibit X, Test Claim, pages 20-21 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

<sup>130</sup> Exhibit X, Test Claim, page 23 (Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, December 6, 2018).

products in the schools' restrooms,” but provides no further information or explanation why training is necessary.<sup>131</sup>

The Commission did not approve training as a mandated activity in the Test Claim Decision because the activity is not required by the plain language of the test claim statute. For this activity to be approved as reasonably necessary to comply with the mandate pursuant to Government Code sections 17557 and 17559, and sections 1183.7 and 1187.5 of the Commission’s regulations, the claimant must explain and support with substantial evidence in the record and in accordance with the Commission’s regulations, why training of certificated, classified, and other personnel is reasonably necessary to comply with the mandate.

Accordingly, the Commission denies this request.

#### **D. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, fixed assets, and contracted services. However, travel and training costs were not included in the Draft Expedited Parameters and Guidelines because those activities were not approved in the Test Claim Decision and the claimant did not request these costs as reasonably necessary to perform the mandated activity or submit substantial evidence to support such a request.

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

#### **V. Conclusion**

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

### **PARAMETERS AND GUIDELINES**

Education Code Section 35292.6, Statutes 2017, Chapter 687 (AB 10)

*Public School Restrooms: Feminine Hygiene Products*

18-TC-01

Reimbursement for this program begins January 1, 2018.

#### **I. SUMMARY OF THE MANDATE**

On May 24, 2019, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Education Code section 35292.6, as added by Statutes 2017, chapter 687, imposes a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, beginning January 1, 2018, on school districts with schools that meet specified criteria to stock 50 percent of such schools’ restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils.

#### **II. ELIGIBLE CLAIMANTS**

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<sup>131</sup> Exhibit N, Claimant’s Late Filing, Declaration of Jordan Aquino, Desert Sands Unified School District, page 1.

Any "school district" as defined in Government Code section 17519, except for community college districts, is eligible to claim reimbursement for increased costs incurred as a result of this mandate for the district's schools that meet the following criteria:

- 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:
  - 1) the school is eligible for Title I, Part A funds by either servicing an eligible school attendance area or by being a participating Title I, Part A school, *and*
  - 2) not less than 40 percent of the children enrolled in the school are from low-income families. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

### **III. PERIOD OF REIMBURSEMENT**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on December 7, 2018, establishing eligibility for reimbursement for the 2017-2018 fiscal year, beginning July 1, 2017. However, Statutes 2017, chapter 687 became effective on January 1, 2018, establishing the period of reimbursement beginning January 1, 2018.

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

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

### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the

event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

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

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

For each eligible claimant that incurs increased costs, the following ongoing activities ~~is~~ are reimbursable for the district’s schools that meet the criteria described above:

- A. Stock 50 percent of the school’s restrooms with feminine hygiene products (defined only as tampons and sanitary napkins) at all times at no cost to pupils. (Ed. Code §35292.6, Stats. 2017, ch. 687.)

To support the actual cost for labor and materials incurred as a result of this mandate, claimants must identify in their reimbursement claims the schools required to implement the mandated activity, ~~and~~ the number of restrooms in each of these schools, and each school’s total enrollment of female pupils in grades 6 to 12 in the claim year.

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

***Reimbursement is not required to stock more than 50 percent of the school’s restrooms with feminine hygiene products or to stock any menstrual products other than tampons and sanitary napkins.***

- B. Purchase and install (or retrofit or repair) a sufficient number of suitable dispensers for feminine hygiene products (defined only as tampons and sanitary napkins) in 50 percent of the school’s restrooms.<sup>132</sup>

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

***Reimbursement to purchase and install new dispensers is required only to the extent that a school is not already equipped with a sufficient number of dispensers in their***

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<sup>132</sup> Declaration of Jordan Aquino, Chief Business Officer for the Desert Sands Unified School District, September 20, 2019.

**restrooms to comply with the mandate, or cannot repair or retrofit a sufficient number of existing dispensers to comply with the mandate.**

## **V. CLAIM PREPARATION AND SUBMISSION**

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

### **A. Direct Cost Reporting**

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

#### **1. Salaries and Benefits**

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

#### **2. Materials and Supplies**

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

#### **3. Contracted Services**

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

#### **4. Fixed Assets**

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

### **B. Indirect Cost Rates**

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost

objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

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

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

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>133</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

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

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

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

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

## **IX. REMEDIES BEFORE THE COMMISSION**

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<sup>133</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.



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

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

#### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

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

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

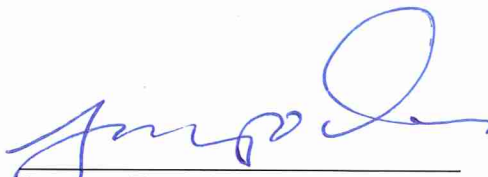
On October 2, 2019, I served the:

- **Revised Draft Proposed Decision and Parameters and Guidelines issued October 2, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 October 2, 2019 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/13/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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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**RECEIVED**

October 18, 2019

**Commission on  
State Mandates**

**BETTY T. YEE**  
**California State Controller**

October 18, 2019

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

**SUBJECT: Revised Draft Proposed Decision and Parameters and Guidelines,  
Schedule for Comments, and Notice of Hearing**

*Public School Restrooms: Feminine Hygiene Products, 18-TC-01*  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

Dear Ms. Halsey:

The State Controller's Office reviewed the Revised Proposed Decision and Proposed Parameters and Guidelines for the Public School Restrooms: Feminine Hygiene Products program and recommends no changes.

If you have any questions, please contact Lacey Baysinger of the Local Reimbursements Section in the Local Government Programs and Services Division, at [LBaysinger@sco.ca.gov](mailto:LBaysinger@sco.ca.gov) or (916) 324-7876

Sincerely,

A handwritten signature in blue ink that reads "Debra Morton". The signature is fluid and cursive.

Debra Morton, Manager  
Local Reimbursements Section



**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.

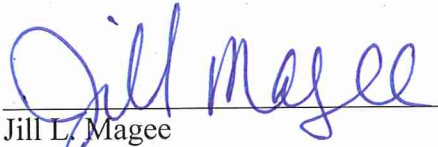
On October 18, 2019, I served the:

- **Controller's Comments on the Revised Draft Proposed Decision and Parameters and Guidelines filed October 18, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 October 18, 2019 at Sacramento, California.



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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/13/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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STATE of CALIFORNIA  
COMMISSION ON STATE  
MANDATES



**TEST CLAIM FORM**

**Section 1**

Proposed Test Claim Title:

Public School Restrooms: Feminine Hygiene Products

**Section 2**

Local Government (Local Agency/School District) Name:

Desert Sands Unified School District

Name and Title of Claimant's Authorized Official pursuant to CCR, tit.2, § 1183.1(a)(1-5):

Scott Bailey, Superintendent

Street Address, City, State, and Zip:

47-950 Dune Palms Road, La Quinta, California 92253

Telephone Number

Fax Number

Email Address

760-777-4200

slbailey@desertsands.us

**Section 3**

Claimant Representative: Arthur M. Palkowitz Title Attorney

Organization: Artiano Shinoff

Street Address, City, State, Zip:

2488 Historic Decatur Road, Suite 200, San Diego, California 92106

Telephone Number

Fax Number

Email Address

619-232-3122

619-232-3264

apalkowitz@as7law.com

Revised 11/2018

**Section 4 – Please identify all code sections (include statutes, chapters, and bill numbers; e.g., Penal Code section 2045, Statutes 2004, Chapter 54 [AB 290]), regulatory sections (include register number and effective date; e.g., California Code of Regulations, title 5, section 60100 (Register 1998, No. 44, effective 10/29/98), and other executive orders (include effective date) that impose the alleged mandate pursuant to Government Code section 17553 and don't forget to check whether the code section has since been amended or a regulation adopted to implement it (refer to your completed WORKSHEET on page 7 of this form):**

Statute 2017, Chapter 687, AB No. 10, Ed. Code 35292.6, effective date 1/1/2018 <hr/> <hr/> <hr/>
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☒ Test Claim is Timely Filed on [Insert Filing Date] [select either A or B]: 12/ 7 / 2018

☒ A: Which is not later than 12 months following [insert the effective date of the test claim statute(s) or executive order(s)] 1 / 1 / 2018, the effective date of the statute(s) or executive order(s) pled; or

☐ B: Which is within 12 months of [insert the date costs were *first* incurred to implement the alleged mandate]     /     /    , which is the date of first incurring costs as a result of the statute(s) or executive order(s) pled. *This filing includes evidence which would be admissible over an objection in a civil proceeding to support the assertion of fact regarding the date that costs were first incurred.*

([Gov. Code § 17551\(c\)](#); [Cal. Code Regs., tit. 2, §§ 1183.1\(c\)](#) and [1187.5.](#))

**Section 5 – Written Narrative:**

☒ Includes a statement that actual and/or estimated costs exceed one thousand dollars (\$1,000). ([Gov. Code § 17564.](#))

☒ Includes all of the following elements for each statute or executive order alleged pursuant to [Government Code section 17553\(b\)\(1\)](#) (refer to your completed WORKSHEET on page 7 of this form):

☒ Identifies all sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate, including a detailed description of the *new* activities and costs that arise from the alleged mandate and the existing activities and costs that are *modified* by the alleged mandate;

☒ Identifies *actual* increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate;

☒ Identifies *actual or estimated* annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;



- ☒ Contains a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed;  
Following FY: 2018 - 2019 Total Costs: \$5,000,000.00
- ☒ Identifies all dedicated funding sources for this program; State: None  
Federal: None Local agency's general purpose funds: None  
Other nonlocal agency funds: None  
Fee authority to offset costs: None
- ☒ Identifies prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate: Williams Cost Implementation
- ☐ Identifies a legislatively determined mandate that is on the same statute or executive order: \_\_\_\_\_

***Section 6 – The Written Narrative Shall be Supported with Declarations Under Penalty of Perjury Pursuant to Government Code Section 17553(b)(2) and California Code of Regulations, title 2, section 1187.5, as follows (refer to your completed WORKSHEET on page 7 of this form):***

- ☒ Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
- ☒ Declarations identifying all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.
- ☒ Declarations describing new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program).
- ☐ If applicable, declarations describing the period of reimbursement and payments received for full reimbursement of costs for a legislatively determined mandate pursuant to Government Code section 17573, and the authority to file a test claim pursuant to paragraph (1) of subdivision (c) of Government Code section 17574.
- ☒ The declarations are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

***Section 7 – The Written Narrative Shall be Supported with Copies of the Following Documentation Pursuant to Government Code section 17553(b)(3) and California Code of Regulations, title 2, § 1187.5 (refer to your completed WORKSHEET on page 7 of this form):***

- ☒ The test claim statute that includes the bill number, and/or executive order identified by its effective date and register number (if a regulation), alleged to impose or impact a mandate. Pages DSUSD000017 to DSUSD000019.

- ☐ Relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate. Pages \_\_\_\_\_ to \_\_\_\_\_.
- ☐ Administrative decisions and court decisions cited in the narrative. (Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.) Pages \_\_\_\_\_ to \_\_\_\_\_.
- ☒ Evidence to support any written representation of fact. *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 objection in civil actions.* (Cal. Code Regs., tit. 2, § 1187.5). Pages DSUSD000025 to DSUSD000033.

**Section 8 –TEST CLAIM CERTIFICATION Pursuant to Government Code section 17553**

- ☐ The test claim form is signed and dated at the end of the document, under penalty of perjury by the eligible claimant, with the declaration that the test claim is true and complete to the best of the declarant's personal knowledge, information, or belief.

*Read, sign, and date this section. Test claims that are not signed by authorized claimant officials pursuant to California Code of Regulations, title 2, section 1183.1(a)(1-5) will be returned as incomplete. In addition, please note that this form also serves to designate a claimant representative for the matter (if desired) and for that reason may only be signed by an authorized local government official as defined in section 1183.1(u)(1-5) of the Commission's regulations, and not by the representative.*

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim is true and complete to the best of my own personal knowledge, information, or belief. All representations of fact are supported by documentary or testimonial evidence and are submitted in accordance with the Commission's regulations. (Cal. Code Regs., tit.2, §§ 1183.1 and 1187.5.)

Scott Bailey

Superintendent

Name of Authorized Local Government Official  
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

Print or Type Title

  
Signature of Authorized Local Government Official  
pursuant to Cal. Code Regs., tit.2, § 1183.1(a)(1-5)

December 7, 2018

Date

**Test Claim Form Sections 4-7 WORKSHEET**

**Complete Worksheets for Each New Activity and Modified Existing Activity Alleged to Be Mandated by the State, and Include the Completed Worksheets With Your Filing.**

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Statute 2017, Chapter 687, AB No. 10, Ed. Code 35292.6, 1/1/2018

Activity: Developing and Implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products.

Initial FY: 2017- 2018 Cost: \$374.16 Following FY: 2018- 2019 Cost: \$191.40

Evidence (if required): Declaration

All dedicated funding sources; State: None Federal: None

Local agency's general purpose funds: None

Other nonlocal agency funds: None

Fee authority to offset costs: None

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Statute 2017, Chapter 687, AB No. 10, Ed. Code 35292.6, 1/1/2018

Activity: Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms.

Initial FY: 2017- 2018 Cost: \$2,110.51 Following FY: 2018 - 2019 Cost: \$2,132.48

Evidence (if required): Declaration

All dedicated funding sources; State: None Federal: None

Local agency's general purpose funds: None

Other nonlocal agency funds: None

Fee authority to offset costs: None

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Statute 2017, Chapter 687, AB No. 10, Ed. Code 35292.6, 1/1/2018

Activity: Purchasing and installing dispensers in the schools' restrooms.

Initial FY: 2017- 2018 Cost: \$19,501.67 Following FY: 2018 - 2019 Cost: \$2,034.96

Evidence (if required): Declaration / Invoices

All dedicated funding sources; State: None Federal: None

Local agency's general purpose funds: None

Other nonlocal agency funds: None

Fee authority to offset costs: None

**Test Claim Form Sections 4-7 WORKSHEET**

**Complete Worksheets for Each New Activity and Modified Existing Activity Alleged to Be Mandated by the State, and Include the Completed Worksheets With Your Filing.**

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: Statute 2017, Chapter 687, AB No. 10, Ed. Code 35292.6, 1/1/2018

Activity: Stocking the schools' restrooms with feminine hygiene products at all times.

Initial FY: 2017- 2018 Cost: \$39,629.38 Following FY: 2018- 2019 Cost: \$39,629.38

Evidence (if required): Declaration / Invoices

All dedicated funding sources; State: None Federal: None

Local agency's general purpose funds: None

Other nonlocal agency funds: None

Fee authority to offset costs: None

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: \_\_\_\_\_

Activity: \_\_\_\_\_

Initial FY: \_\_\_\_\_ - \_\_\_\_\_ Cost: \_\_\_\_\_ Following FY: \_\_\_\_\_ - \_\_\_\_\_ Cost: \_\_\_\_\_

Evidence (if required): \_\_\_\_\_

All dedicated funding sources; State: \_\_\_\_\_ Federal: \_\_\_\_\_

Local agency's general purpose funds: \_\_\_\_\_

Other nonlocal agency funds: \_\_\_\_\_

Fee authority to offset costs: \_\_\_\_\_

Statute, Chapter and Code Section/Executive Order Section, Effective Date, and Register Number: \_\_\_\_\_

Activity: \_\_\_\_\_

Initial FY: \_\_\_\_\_ - \_\_\_\_\_ Cost: \_\_\_\_\_ Following FY: \_\_\_\_\_ - \_\_\_\_\_ Cost: \_\_\_\_\_

Evidence (if required): \_\_\_\_\_

All dedicated funding sources; State: \_\_\_\_\_ Federal: \_\_\_\_\_

Local agency's general purpose funds: \_\_\_\_\_

Other nonlocal agency funds: \_\_\_\_\_

Fee authority to offset costs: \_\_\_\_\_

Test Claim: Public School Restrooms  
Feminine Hygiene Products  
Claimants: Desert Sands Unified School District  
5. Written Narrative

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**BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA**

Test Claim of:

Desert Sands Unified School District

Claimants.

No. CSM \_\_\_\_\_

Public School Restrooms  
Feminine Hygiene Products  
Assembly Bill No. 10  
Statutes 2017, Chapter 687  
Education Code Section 35292.6

**STATEMENT OF THE CLAIM**

This test claim alleges reimbursable costs mandated by the State for school districts to provide Feminine Hygiene Products for a public school maintaining any combination of classes from grade 6 to grade 12, that meets the 40-percent pupil poverty threshold required to operate a school wide program, pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code, shall stock at least 50 percent of the school's restrooms with feminine hygiene products ("Feminine Hygiene Products") at all times pursuant to the requirements in Statutes 2017 Chapter 687, A.B. No 10.

Desert Sands Unified School District ("Claimant") allege that the test claim statutes impose a reimbursable state mandated program for school districts under Article XIII B, section 6 and Government Code section 17514. It was the intent of the Legislature in enacting the test claim statutes and regulations to require school districts to provide school restrooms with feminine hygiene products at all times.

### **AUTHORITY FOR THE CLAIM**

The Commission on State Mandates has the authority, pursuant to Government Code section 17551, subdivision (a), to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the State for costs mandated by the State, as required by section 6 of Article XIII B of the California Constitution. (*Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.) The determination of whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. (*County of San Diego v. State of California*, (1997) 15 Cal.4th 68,109.)

Claimant is a school district as defined in Government Code Section 17519. This test claim is filed pursuant to Title 2, California Code of Regulations section 1183.1.

#### **A. California Constitution requires the State to reimburse schools**

Article XIII B, section 6 of the California Constitution states:

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 [p]reclude 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 article XIII A and XIII B impose. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.) Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government]..." (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.) 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. (*San Diego Unified School Dist. v. Commission on State Mandates*, (2004) 33 Cal.4th 859, 874.)

2. Under the first alternative test set forth by the California Supreme Court, a "new program or higher level of service" is established by "programs that carry out the governmental function of providing services to the public." (*San Diego Unified Sch. Dist. v. Comm'n on State Mandates*, 33 Cal. 4th 859, 874 (2004) (quoting *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56).

3. Under the second alternative test set forth by the California Supreme Court, a "new program or higher level of service" is established by "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." (*San Diego Unified Sch. Dist. v. Comm'n on State Mandates*, 33 Cal. 4th 859, 874 (2004) (quoting *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56).

4. The mandated activity is a new law when compared with the legal requirements in effect immediately before the enactment of the test claim statute, and it increases the level of service provided to the public in enforcing a state policy. (*San Diego Unified School Dist.*, supra 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal 3d 830, 835.)

**B. The new program is mandated when the schools incur increased costs.**

Government Code section 17514 provides that [c]osts mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17564 provides that: [n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551, or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars.

Claimant alleges increased costs exceeds the \$1,000.00 minimum claim amount articulated in Government Code section 17564(a). Government Code section 17556(e) states that there are no costs mandated by the state, if additional revenue specifically intended to fund the costs of the mandated activities, in an amount sufficient to fund the cost of the state-mandated activities, has been appropriated in a Budget Act or other bill.

There is no evidence that additional on-going revenue has been appropriated, specifically to fund the costs of the mandated activities in this claim. Thus, Government Code section 17556(e) does not apply to deny this claim. Accordingly, the evidence in the record supports the finding that the claimant has incurred increased costs mandated by the state, pursuant to Government Code section 17514. However, to the extent a district receives any funding or grant funding and applies those funds to the mandated activities, those funds are required to be identified as offsetting revenue and deducted from the costs claimed by the district.

**A. Statutes 2017 Chapter 687, A.B. No 10.**

Existing law, with certain exceptions, requires every public and private school, as provided, to have restroom facilities that are open as prescribed during school hours, and at all times to keep every restroom maintained and cleaned regularly, fully operational, and stocked with soap and paper supplies.

**SECTION 1, section 35292.6 is added to the Education Code, to read:**

(a) Pursuant to this new legislation, a public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets the 40-percent pupil poverty threshold required to operate a school wide program, pursuant to Section 6314(a)(1)(A) of Title 20 of the United States Code, shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.

(b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products.

(c) For purposes of this section, "feminine hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.



**Activities**

School districts have incurred or will incur costs implementing the following activities:

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

**B. A detailed description of existing activities and costs that are modified by the mandate**

There were no existing activities that were modified by the test claim statute.

**B. The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.**

**January 1, 2018-June 30, 2018**

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products. (supported by declaration)

**Labor Costs**

Description	Qty (hours)	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
M&O Director	2	\$67.71	\$135.42
Purchasing Director	2	\$82.23	\$164.46
Purchasing Buyer	2	\$37.15	\$74.30
		Total	\$374.16

- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms. (supported by declaration)

### Labor Costs

Description	Qty.	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
Principals	34 at .5 hours	84.46	\$1,435.82
Custodians	49 at .5 hours	27.13	\$ 664.69
		Total	\$2,110.51

- (iii) Purchasing and installing dispensers in the schools' restrooms. (supported by declaration and invoices)

### Equipment Costs

Description	Qty	Unit Cost (including installation)	Total Cost
Dispensers	115	\$156.74	\$19,501.67

- (iv) Stocking the schools' restrooms with feminine hygiene products at all times. (supported by declaration and invoices)

### Equipment Costs

Description	Annual Case Qty	Unit Cost	Total Cost
Feminine Hygiene Pads	7	\$24.62	\$172.34
	15	\$24.62	369.30
	30	\$22.90	687.00
	30	\$21.30	639.00
		Feminine Hygiene Pads Total	\$1,867.64
Feminine Hygiene Tampons	6	\$52.50	\$ 315.00
	24	\$52.50	\$1,260.00
	50	\$54.87	\$2,743.50
		Feminine Hygiene Tampons Total	\$4,318.50
		Total	\$6,186.14

Test Claim: Public School Restrooms  
 Feminine Hygiene Products  
 Claimants: Desert Sands Unified School District  
 5. Written Narrative

**Labor Costs (supported by declaration)**

Description	Instructional Days	# of Custodians @ Middle/High Schools	Minutes per day to refill stock	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
Refill Stock	180	49	0.13	\$27.54	\$32,387.04

Description	Hours	Average Hourly Rate incl. Fixed Charges	Total Cost
Order/Maintain Stock	30	\$35.21	\$1,056.20

(iv) Total Expenses \$39,629.38

**C. The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.**

**2018-2019**

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products. (supported by declaration)

**Labor Costs**

Description	Qty	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
M&O Director	1	\$71.09	\$71.09
Purchasing	1	\$82.23	\$82.23
Director	1	\$38.08	\$38.08
Purchasing Buyer			
		Total	\$191.40

- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms. (supported by declaration)

**Labor Costs**

Description	Qty	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
Principals	34 (.5 hour)	85.75	\$1,457.75
Custodians	49 (.5 hour)	27.54	674.73
		Total	\$ 2,132.48

- (iii) Purchasing and installing dispensers in the schools' restrooms. (supported by declaration)

Equipment Costs

Description	Qty	Unit Cost (including installation)	Total Cost
Dispensers	12	169.58	\$2,034.96

- (iv) Stocking the schools' restrooms with feminine hygiene products at all times. (supported by declaration and invoices)

Equipment Costs

Equipment Costs

Description	Annual Case Qty	Unit Cost	Total Cost
Feminine Hygiene Pads	7	\$24.62	\$172.34
	15	\$24.62	369.30
	30	\$22.90	687.00
	30	\$21.30	639.00
		Feminine Hygiene Pads Total	\$1,867.64
Feminine Hygiene Tampons	6	\$52.50	\$ 315.00
	24	\$52.50	\$1,260.00
	50	\$54.87	\$2,743.50
		Feminine Hygiene Tampons Total	\$4,318.50
		Total	\$6,186.14

(DSUSD000021:#3; DSUSD000024; DSUSD000024 #1; DSUSD000026;  
DSUSD000027: #2; DSUSD000029)

Stocking the schools' restrooms with feminine hygiene products at all times performed by custodians in the amounts of \$32,387.04 and \$1,056.20.

Labor Costs

Description	Instructional Days	# of Custodians @ Middle/High Schools	Minutes per day to refill stock	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
Refill Stock	180	49	0.13	\$27.54	\$32,387.04

Test Claim: Public School Restrooms  
Feminine Hygiene Products  
Claimants: Desert Sands Unified School District  
5. Written Narrative

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Description	Hours	Average Hourly Rate incl. Fixed Charges	Total Cost
Order/Maintain Stock	30	\$35.21	\$1,056.20

(v) Total Expenses \$39,629.38

**E. A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.**

\$5,000,000.00.

**F. Identification of all of the following funding sources available for this program:**

(i) **Dedicated state funds<sup>1</sup>**

*Claimant is unaware at this time of any other dedicated state funds available for this program.*

(ii) **Dedicated federal funds**

*Claimant is unaware at this time of any other dedicated state funds available for this program.*

(iii) **Other nonlocal agency funds**

*Claimant is unaware at this time of any other dedicated state funds available for this program.*

(iv) **The local agency's general purpose funds**

*Claimant is unaware at this time of any other dedicated state funds available for this program.*

(v) **Fee authority to offset costs**

*Claimant is unaware at this time of any other dedicated state funds available for this program.*

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<sup>1</sup> 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 that local government for the costs of the program or increased level of service. (Cal. Const. art. 13B, § 6)

**G. Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate**

Education Code Sections 14501, 33126(b), 35186, 41020 and 42127.6 required students be provided with decent, clean and safe facilities that was maintained to ensure good repair, along with providing sufficient instructional materials and qualified teachers. (Williams Cost Implementation I, II, III; 05-TC-04; 07-TC-06; 08-TC-01)

*Claimant is unaware at this time of any other prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.*

**H. Identification of a legislatively determined mandate pursuant to Government Code section 17573 that is on the same statute or executive order**

*Claimant is unaware at this time of any other dedicated state funds available for this program.*

2017 Cal. Legis. Serv. Ch. 687 (A.B. 10) (WEST)

CALIFORNIA 2017 LEGISLATIVE SERVICE

2017 Portion of 2017-2018 Regular Session

Additions are indicated by Text; deletions by

\*\*\*

Vetoed are indicated by ~~Text~~ ;  
stricken material by ~~Text~~ .

CHAPTER 687

A.B. No. 10

SCHOOLS AND SCHOOL DISTRICTS—RESTROOMS AND TOILETS—FEMININE HYGIENE PRODUCTS

AN ACT to add Section 35292.6 to the Education Code, relating to feminine hygiene products.

[Filed with Secretary of State October 12, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 10, Cristina Garcia. Feminine hygiene products: public school restrooms.

Existing law, with certain exceptions, requires every public and private school, as provided, to have restroom facilities that are open as prescribed during school hours, and at all times to keep every restroom maintained and cleaned regularly, fully operational, and stocked with soap and paper supplies.

This bill would require a public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets a 40% pupil poverty threshold specified in federal law to stock 50% of the school's restrooms with feminine hygiene products, as defined. The bill would prohibit a public school from charging for any menstrual products, including feminine hygiene products, provided to pupils. By imposing additional duties on public schools, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 35292.6 is added to the Education Code, to read:

<< CA EDUC § 35292.6 >>

35292.6. (a) A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets 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 shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.

(b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products.

(c) For purposes of this section, "feminine hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

**SEC. 2.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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End of Document

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West's Annotated California Codes  
Education Code (Refs & Annos)  
Title 2. Elementary and Secondary Education (Refs & Annos)  
Division 3. Local Administration (Refs & Annos)  
Part 21. Local Educational Agencies (Refs & Annos)  
Chapter 2. Governing Boards (Refs & Annos)  
Article 10. School Maintenance (Refs & Annos)

West's Ann.Cal.Educ.Code § 35292.6

§ 35292.6. Public school restrooms; feminine hygiene products; when required

Effective: January 1, 2018

Currentness

(a) A public school maintaining any combination of classes from grade 6 to grade 12, inclusive, that meets 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 shall stock at least 50 percent of the school's restrooms with feminine hygiene products at all times.

(b) A public school described in subdivision (a) shall not charge for any menstrual products provided to pupils, including, but not limited to, feminine hygiene products.

(c) For purposes of this section, "feminine hygiene products" means tampons and sanitary napkins for use in connection with the menstrual cycle.

**Credits**

(Added by Stats.2017, c. 687 (A.B.10), § 1, eff. Jan. 1, 2018.)

West's Ann. Cal. Educ. Code § 35292.6, CA EDUC § 35292.6

Current with urgency legislation through Ch. 1016 of 2018 Reg.Sess, and all propositions on 2018 ballot.

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End of Document

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Test Claim: Public School Restrooms

Feminine Hygiene Products

Claimants: Desert Sands Unified School District

Section: 6 Declaration – Jordan Aquino, Chief Business Officer, Desert Sands Unified School District

**SECTION NUMBER: 6**  
**Heading: DECLARATION**

I, Jordan Aquino, Chief Business Officer, Desert Sands Unified School District, (“District”) declare as follows:

1. I am employed with the District and I have personal knowledge of the actual and estimated costs incurred by the District for the Feminine Hygiene Products program commencing on January 1, 2018. The information contained in my declaration is from reviewing District business records and my personal knowledge pertaining to the Feminine Hygiene Products program.

2. The new activities performed, or to be performed, to implement provisions of the new statute alleged to impose the reimbursable mandate, Assembly Bill No. 10; Statutes 2017, Chapter 687; Education Code Section 35292.6 include the following:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products;
- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools’ restrooms;
- (iii) The cost of purchasing and installing dispensers in the schools’ restrooms;
- (iv) The cost of stocking the schools’ restrooms with feminine hygiene products at all times.

3. Total Feminine Hygiene Products estimated 2017-2018 costs are as follows:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products. These costs represent labor costs for Maintenance & Operations Director, Purchasing Director and Purchasing Buyer in the amount of \$ 374.16.

**Labor Costs**

Description	Qty (hours)	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
M&O Director	2	\$67.71	\$135.42
Purchasing Director	2	\$82.23	\$164.46
Purchasing Buyer	2	\$37.15	\$74.30
		Total	\$374.16

Test Claim: Public School Restrooms

Feminine Hygiene Products

Claimants: Desert Sands Unified School District

Section: 6 Declaration – Jordan Aquino, Chief Business Officer, Desert Sands Unified School District

- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the schools' restrooms. These costs represent labor costs for Principals and Custodians in the amount of \$2,110.51.

Labor Costs

Description	Qty.	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
Principals	34 at .5 hours	84.46	\$1,435.82
Custodians	49 at .5 hours	27.13	\$ 664.69
		Total	\$2,110.51

- (iii) The cost of purchasing and installing dispensers in the schools' restrooms in the amount of \$19,501.67. (DSUSD000026)

Equipment Costs

Description	Qty	Unit Cost (including installation)	Total Cost
Dispensers	115	\$156.74	\$19,501.67

(DSUSD000028)

- (iv) Stocking the schools' restrooms with feminine hygiene products at all times in the amounts of the following:

Equipment Costs

Description	Annual Case Qty	Unit Cost	Total Cost
Feminine Hygiene Pads	7	\$24.62	\$172.34
	15	\$24.62	369.30
	30	\$22.90	687.00
	30	\$21.30	639.00
		Feminine Hygiene Pads Total	\$1,867.64
Feminine Hygiene Tampons	6	\$52.50	\$ 315.00
	24	\$52.50	\$1,260.00
	50	\$54.87	\$2,743.50
		Feminine Hygiene Tampons Total	\$4,318.50
		Total	\$6,186.14

(DSUSD000025:#3; DSUSD000028; DSUSD000030; DSUSD000031; DSUSD000033)

Test Claim: Public School Restrooms

Feminine Hygiene Products

Claimants: Desert Sands Unified School District

Section: 6 Declaration – Jordan Aquino, Chief Business Officer, Desert Sands Unified School District

### Labor Costs

Stocking the schools' restrooms with feminine hygiene products at all times performed by custodians in the amounts of \$32,387.04 and \$1,056.20.

Description	Instructional Days	# of Custodians @ Middle/High Schools	Minutes per day to refill stock	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
Refill Stock	180	49	0.13	\$27.54	\$32,387.04

Description	Hours	Average Hourly Rate incl. Fixed Charges	Total Cost
Order/Maintain Stock	30	\$35.21	\$1,056.20

Total \$39,629.38

4. Total Feminine Hygiene Products estimated 2018-2019 costs are as follows:

- (i) Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products in the amount of \$191.40. The amounts are estimates based on the previous year costs.

### Labor Costs

Description	Qty	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
M &O Director	1	\$71.09	\$71.09
Purchasing Director	1	\$82.23	\$82.23
Purchasing Buyer	1	\$38.08	\$38.08
		Total	\$191.40

Test Claim: Public School Restrooms

Feminine Hygiene Products

Claimants: Desert Sands Unified School District

Section: 6 Declaration – Jordan Aquino, Chief Business Officer, Desert Sands Unified School District

- (ii) Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms. (supported by declaration)

Labor Costs

Description	Qty	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
Principals	34 (.5 hour)	85.75	\$1,457.75
Custodians	49 (.5 hour)	27.54	674.73
		Total	\$2,132.48

- (iii) Purchasing and installing dispensers in the schools' restrooms. (supported by declaration)

Equipment Costs

Description	Qty	Unit Cost (including installation)	Total Cost
Dispensers	12	169.58	\$2,034.96

The amounts are estimates based on the previous year costs.

- (iv) The cost of stocking the schools' restrooms with feminine hygiene products at all times in the following amounts:

Equipment Costs

Description	Annual Case Qty	Unit Cost	Total Cost
Feminine Hygiene Pads	7	\$24.62	\$172.34
	15	\$24.62	369.30
	30	\$22.90	687.00
	30	\$21.30	639.00
		Feminine Hygiene Pads Total	\$1,867.64
Feminine Hygiene Tampons	6	\$52.50	\$ 315.00
	24	\$52.50	\$1,260.00
	50	\$54.87	\$2,743.50
		Feminine Hygiene Tampons Total	\$4,318.50
		Total	\$6,186.14

Test Claim: Public School Restrooms

Feminine Hygiene Products

Claimants: Desert Sands Unified School District

Section: 6 Declaration – Jordan Aquino, Chief Business Officer, Desert Sands Unified School District

Labor Costs

Description	Instructional Days	# of Custodians @ Middle/High Schools	Minutes per day to refill stock	Avg Hrly Rate (incl. Fixed Charges)	Total Cost
Refill Stock	180	49	0.13	\$27.54	\$32,387.04

Description	Hours	Average Hourly Rate incl. Fixed Charges	Total Cost
Order/Maintain Stock	30	\$35.21	\$1,056.20

Total \$39,629.38

The amounts are estimates based on the previous year costs.

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.

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 information and belief and I am authorized and competent to do so.

Dated: December 10, 2018

  
JORDAN AQUINO, CHIEF BUSINESS OFFICER  
DESERT SANDS UNIFIED SCHOOL DISTRICT

# COMPLETE



**DESERT SANDS UNIFIED SCHOOL DISTRICT**  
47-950 DUNE PALMS ROAD, LA QUINTA, CA 92253

**Purchase Order #: P-0069979**

Fiscal Year: 2017-2018

Date: 01/08/2018

Purchase Order number must appear on all packages and documents.

<b>Vendor:</b> 10408 <b>WAXIE</b> 908 NORTH WINEVILLE AVENUE ONTARIO, CA 91784  <b>Phone:</b> 760-831-7980 <b>P.O. Send:</b>	<b>DIR#:</b>     <b>Fax:</b> 760-343-4411	<b>Buyer:</b> ADELINE CARRASCO <b>Phone:</b> (760) 771-8572 <b>Payment Terms:</b> NET30 <b>Terms &amp; Conditions:</b> SEE PURCHASING WEB PAGE <b>FOB:</b> <b>Justification:</b> <b>Routing:</b> M&O/Joel Parks	<b>Fax:</b> (760) 771-8574
<b>Deliver on or Before:</b> 2/7/2018 <b>Ship To:</b> DESERT SANDS WAREHOUSE 47950 DUNE PALMS RD. LA QUINTA, CA 92253		<b>Bill To:</b> FISCAL SERVICES 47950 DUNE PALMS RD. LA QUINTA, CA 92253 <b>Fax:</b> 760-238-8652	

**FAXED**  
1/8/18

**Originator:** SYLVIA QUINTANA (R0085791)  
**Note:** Quote per Jeff Olinger Dated 12/18/2017  
**VENDOR NOTE:** DSUSD Warehouse will be closed for deliveries on the following dates: 01/15/2018, 2/12/2018 and 2/19/2018.

	Qty	U/M	Item Name	Unit Cost	Total
1.	115.00	✓ EACH	88HSCMT1FREE Description: Maxthin/Tampax Dual Vendor w/ Free Release 03-843-0010-0-0000-8200-4300	148.740000	18,878.10
2.	115.00	✓ EACH	838308 Description: Installation Charge 03-843-0010-0-0000-8200-5800	10.500000	1,150.00
3.	7.00	✓ EACH	820020 Description: Maxithins #4 Feminine Hygiene Pads 250/cs 03-843-0010-0-0000-8200-4300	24.820000	172.34
4.	8.00	✓ EACH	822000 Description: Tampax Regular Absorbency Tampons 500/cs 03-843-0010-0-0000-8200-4300	52.500000	318.00
				Total Line Items:	18,512.44
				Discount:	.00
				Sub-Total:	18,512.44
				Tax:	1,519.21
				Freight:	.00
				Order Total:	20,031.65

TO: PROCESSED  
 BY: JAN 23 2018  
 PURCHASING DEPT.

*Nancy Carrasco*  
 Authorized Signature

P 0 0 6 9 9 7 9

12/27/17  
Req 85741



# DESERT SANDS UNIFIED SCHOOL DIST

Attn: Gabe De La O  
Sanitary Maintenance Supplies Price Proposal  
December 18, 2017

WAXIE'S Sanitary Supply is pleased to present you with the following price proposal for your review.

Item #	Description	Unit	QTY	Unit Price	Extended Price
MANSCMT1FREE	Dual Vendor office Package	EA	115	\$148.74	\$16,875.10
634308	Installation Charge	EA	115	\$90.00	\$10,350.00
				Subtotal	\$18,025.10
				Business Tax	\$1,478.57
				Total	\$19,503.67

Prices are valid through January 18, 2017.

Please feel free to contact me if you have any questions or comments.

Thank You,

Jeff Olsager | Senior Account Consultant  
(760) 865-7476  
jolsager@waxies.com | jeff@waxies.com

Regional Inventory Center • 805 N. Mainville Avenue • Oxnard, CA 91321-3205  
(805) 443-2400 • (805) 443-1000 • FAX (805) 443-3188 • www.waxies.com





**\*\*TRIAL PRINT\*\***

Purchase Order:

P-37831-0

DESERT SANDS UNIFIED SCHOOL DISTRICT  
47950 Dune Palms Road  
La Quinta, CA 92253  
760-771-8567 Fax: 760-771-8574

Date: 07/10/2018  
Time: 11:46  
Page: 1 of 2

<b>Vendor:</b> 10408 WAXIE SANITARY SUPPLY 905 NORTH WINEVILLE AVENUE ONTARIO, CA 91764		<b>Buyer:</b> Vickie Haddox <b>Payment Terms:</b> NET 30 <b>Terms and Conditions:</b> See Attachment A <b>FOB:</b> Destination <b>Routing:</b> Warehouse Stock Items <b>Deliver on or before:</b> 02/23/2018			
<b>Ship To:</b> Warehouse Stores 47950 Dune Palms Rd. La Quinta, CA 92253		<b>Bill To:</b> Fiscal Services 47950 Dune Palms Rd. La Quinta, CA 92253			
Quote Per Brenda Hernandez <b>VENDOR NOTE:</b> DSUSD Warehouse will be closed for deliveries on the following dates: 02/12/2018 & 02/19/2018					
Line Item	Item ID# / Description	Quantity Ordered	Unit Price	U/M	Total Price
1	31230 Sanitary Pads, 250/case, Maxithins #4 ***NO SUBS*** Funding: 03 (XX) (XXX) 0 (XXX) (XXX) 9320	15.00	\$24.62	CS	\$369.30
2	31231 Tampux Tampons, 500/Case Tampux #63364 ***NO SUB*** Funding: 03 (XX) (XXX) 0 (XXX) (XXX) 9320	24.00	\$52.50	CS	\$1,260.00

DSUSD000028

**\*\*TRIAL PRINT\*\***

Purchase Order: **P-37831-0**

Page: 2 of 2

Total Of Line Items	\$1,629.30
Discount	\$0.00
Sub-Total	\$1,629.30
Use Tax	
Sales Tax	
Freight	\$0.00

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Purchase Order Total	\$1,629.30
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**\*\*\*\*VOID\*\*\*\***

By: \_\_\_\_\_

Deputy

**\*\*TRIAL PRINT\*\***

DSUSD000029

**\*\*TRIAL PRINT\*\***

Purchase Order:

**P-37872-0**

**DESERT SANDS UNIFIED SCHOOL DISTRICT**

47950 Dune Palms Road  
La Quinta, CA 92253  
760-771-8567 Fax: 760-771-8574

Date: 07/10/2018  
Time: 11:46  
Page: 1 of 1

Vendor: 10394 SOUTHWEST SCHOOL & OFFICE SUPPLY 3790 DE FOREST CIRCLE JURUPA VALLEY, CA 91752		Buyer: Vickie Haddox Payment Terms: NET 30 Terms and Conditions: See Attachment A FOB: Destination Routing: Warehouse Stock Items Deliver on or before:04/16/2018			
Ship To: Desert Sands Warehouse 47950 Dune Palms Rd. La Quinta, CA 92253		Bill To: Fiscal Services 47950 Dune Palms Rd. La Quinta, CA 92253			
Quote Per Aja Stickler      ***PLEASE EXPEDITE ORDER***					
Line Item	Item ID# / Description	Quantity Ordered	Unit Price	U/M	Total Price
1	31230 Sanitary Pads, 250/case, Maxithins #4      ***NO SUBS*** Funding: 03 (000 0000 0) (0000 0000) 9320	30.00	\$22.90	CS	\$687.00

Total Of Line Items	687.00
Discount	\$0.00
Sub-Total	\$687.00
Use Tax	
Sales Tax	\$60.11
Freight	\$0.00
Purchase Order Total	\$747.11

**\*\*\*\*VOID\*\*\*\***

By: \_\_\_\_\_

Deputy

**\*\*TRIAL PRINT\*\***

DSUSD000030

**\*\*TRIAL PRINT\*\***

Purchase Order:

P-37936-0

DESERT SANDS UNIFIED SCHOOL DISTRICT  
47950 Dune Palms Road  
La Quinta, CA 92253  
760-771-8567 Fax: 760-771-8574

Date: 07/10/2018  
Time: 11:46  
Page: 1 of 2

<b>Vendor: 10394</b> SOUTHWEST SCHOOL & OFFICE SUPPLY 3790 DE FOREST CIRCLE JURUPA VALLEY, CA 91752		<b>Buyer: Vickie Haddox</b> Payment Terms: NET 30 Terms and Conditions: See Attachment A FOB: Destination Routing: Warehouse Stock Items Deliver on or before: 06/22/2018			
<b>Ship To:</b> Desert Sands Warehouse 47950 Dune Palms Rd. La Quinta, CA 92253		<b>Bill To:</b> Fiscal Services 47950 Dune Palms Rd. La Quinta, CA 92253			
Quote Per Aja Stickler Per Warehouse Inventory Bid #17/18-010 VENDOR NOTE: DSUSD Warehouse will be closed for deliveries on the following date: 05/28/2018					
Line Item	Item ID# / Description	Quantity Ordered	Unit Price	U/M	Total Price
1	31170 Polishing pads, 17" white - Pioneer #G117WHITE Funding: 03 (XX) (XXX) 0 (XXX) (XXX) 9120	60.00	\$2.02	EA	\$121.20
2	31230 Sanitary Pads, 250/case, Muxithins #4 ***NO SUBS*** Funding: 03 (XX) (XXX) 0 (XXX) (XXX) 9320	30.00	\$21.30	CS	\$639.00
3	16216 8.5x11" White Graph Paper, 1/4" grid 3-Hole Punched - Everett #44-152, Imperial #5289-1/4, SS 086667 Funding: 03 (XX) (XXX) 0 (XXX) (XXX) 9320	360.00	\$3.14	RM	\$1,130.40

DSUSD000031

**\*\*TRIAL PRINT\*\***

Purchase Order:

P-37936-0

Page:

2 of 2

Total Of Line Items	\$1,890.60
Discount	\$0.00
Sub-Total	\$1,890.60
Use Tax	
Sales Tax	\$165.43
Freight	\$0.00

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Purchase Order Total	\$2,056.03
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**\*\*\*\*\*VOID\*\*\*\*\***

By: \_\_\_\_\_

Deputy

**\*\*TRIAL PRINT\*\***

DSUSD000032

**\*\*TRIAL PRINT\*\***

Purchase Order:

**P-37884-0**

**DESERT SANDS UNIFIED SCHOOL DISTRICT**

47950 Dune Palms Road  
La Quinta, CA 92253  
760-771-8567 Fax: 760-771-8574

Date: 07/10/2018  
Time: 11:47  
Page: 1 of 1

Vendor: 39443 CENTRAL SANITARY SUPPLY Attn: *RANCHO JANITORIAL SUPPLIES 416 N NINTH ST MODESTO, CA 95350		Buyer: Vickie Macdox Payment Terms: NET 30 Terms and Conditions: See Attachment A FOB: Destination Routing: Warehouse Stock Items Deliver on or before:04/30/2018			
Ship To: Desert Sands Warehouse 47950 Dune Palms Rd. La Quinta, CA 92253		Bill To: Fiscal Services 47950 Dune Palms Rd. La Quinta, CA 92253			
Quote Per Christopher Flores					
Line Item	Item ID# / Description	Quantity Ordered	Unit Price	U/M	Total Price
1	31231 Tampax Tampons, 500/Case Tampax #63364 Funding 03 (XX) (XXXX) (XXXX) (XXXX) 9320	50.00	\$54.87	CS	\$2,743.50

Total Of Line Items	\$2,743.50
Discount	\$0.00
Sub-Total	\$2,743.50
Use Tax	
Sales Tax	\$240.06
Freight	\$0.00

Purchase Order Total      \$2,983.56

**\*\*\*\*VOID\*\*\*\***

By: \_\_\_\_\_

Deputy

**\*\*TRIAL PRINT\*\***

DSUSD000033

### 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 December 17, 2018, I served the:

- **Notice of Complete Test Claim, Schedule for Comments, and Notice of Tentative Hearing Date issued December 17, 2018**
- **Test Claim filed by the Desert Sands Unified School District on December 7, 2018**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 December 17, 2018 at Sacramento, California.

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



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 12/14/18

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands 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.)

**Edmundo Aguilar**, Chief Counsel, *Department of Education*

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January 16, 2019

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

Response to Test Claim 18-TC-01, Public School Restrooms: Feminine Hygiene Products

Dear Ms. Halsey:

The Department of Finance has reviewed the Test Claim 18-TC-01, submitted to the Commission on State Mandates (Commission) by the Desert Sands Unified School District (Claimant). The test claim alleges state-mandated, reimbursable costs associated with Chapter 687, Statutes of 2017 (AB 10), which requires public schools maintaining grades 6 to 12, inclusive, that meet the 40-percent pupil poverty threshold required to operate a Title 1 school wide program, to stock at least 50 percent of the school's restrooms with free feminine hygiene products, including tampons and sanitary napkins, at all times.

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

"School districts have incurred or will incur costs implementing the following activities:

- (i) **Developing and implementation of internal policies, training, procedures relating to the purchase, installation, stocking of feminine hygiene products.**
- (ii) **Train certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms.**
- (iii) Purchasing and installing dispensers in the schools' restrooms.
- (iv) **Stocking the schools' restrooms with feminine hygiene products at all times."**

Based on their interpretation of AB 10, the Claimant asserts that a district will incur increased, ongoing labor costs to develop and implement policies related to the implementation of the measure. Furthermore, the Claimant anticipates increased labor costs to train staff on providing feminine hygiene products, as well as to stock the products in 50 percent of school restrooms at all times. Existing law (Education Code section 35292.5) requires all schools, with few exceptions, to maintain clean, fully operational restrooms, stocked at all times with toilet paper, soap, and paper towels or functional hand dryers. Finance is unsure why the aforementioned activities related to the implementation of AB 10 may not simply be absorbed into existing activities of a school district, therefore not resulting in increased labor costs to that district.

To the extent AB 10 establishes new responsibilities, Finance is concerned the required costs may be overstated in the test claim. Requiring 50 percent of restrooms in certain public schools to stock feminine hygiene products should not require a massive overhaul of school policies and procedures, nor should it result in significant increased labor costs to districts which already maintain sanitary, fully operational restrooms that are stocked at all times with basic school restroom supplies, as required by Education Code sections 35292.5 and 17002. We believe the Commission should require the Claimant to address these points as the analysis of the claim proceeds.

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

Sincerely,

A handwritten signature in black ink, appearing to read "JEFF BELL", with a stylized flourish at the end.

JEFF BELL  
Program Budget Manager

### DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

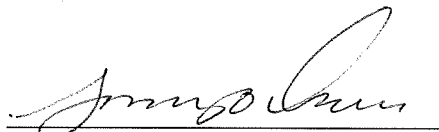
On January 17, 2019, I served the:

- **Department of Finance's (Finance's) Comments on the Test Claim filed January 16, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 17, 2019 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
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Sacramento, CA 95814  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/9/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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February 15, 2019  
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State Mandates**

February 15, 2019

**VIA CSM DROP BOX**

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***Re: Response to Test Claim 18-TC-01, Public School Restrooms: Feminine Hygiene Products***

Dear Ms. Halsey:

Please be advised the following is a response to the comments submitted by the Department of Finance (“DOF”) dated January 16, 2019 regarding the aforementioned Test Claim. DOF’s comments questioned the validity of the claimant’s ongoing labor costs claimed in the Test Claim and that the new activities implemented by the Test Claim, as it relates to labor costs, may be “absorbed into existing activities of the school district therefore not resulting in increased labor costs to that district.”

Contrary to the DOF’s comments, Desert Sands Unified School District (“Claimant”) Test Claim does not assert “a massive overhaul of school policies and procedures. Claimant does agree that there is not an significant increased labor costs to districts which already maintain sanitary, fully operational restrooms that are stocked at all times with basic school restroom supplies...”

**Labor Costs**

Claimant estimating costs for 2017-2018 is \$374 and for 2018-2019, \$191.40, for the developing and implementation of internal policies, training, procedures relating to the purchase, installation, and stocking of feminine hygiene products.

The estimated labor costs for developing and implementation of internal policies training procedures relating to the purchase and installation is approximately six hours for the period January 1, 2018, through June 30, 2018. During the same period, the costs for training certificated, classified and other personnel to administer the availability of feminine hygiene

Artiano Shinoff

Heather Halsey  
Executive Director  
Commission on State Mandates

February 15, 2019  
Page 2

***Re: Response to Test Claim 18-TC-01, Public School Restrooms: Feminine Hygiene Products***

products in the district restrooms is estimated for principals to be at 34.5 hours, and custodians 49.5 hours for a total of \$2,110.51.

The stocking of the school's restrooms with feminine hygiene products (feminine hygiene pads; feminine hygiene tampons) at all times is estimated at \$6,186.14. The labor costs affiliated with these activities are estimated at .13 minutes per day for custodians, for a total of \$39,629.38.

Non-Labor Costs

DOF does not dispute that the purchasing and installing of Feminine Hygiene Products in school restrooms are new activities that provide a higher level of service; and therefore, should be approved as a reimbursable mandate. Claimant estimates the stocking of school restrooms with feminine hygiene products at all times in 2017-2018 will be \$39,629.38, and in 2018-2019, \$39,629.38. The purchasing and installing dispensers in the school's restrooms is estimated to be 115 dispensers, at \$156.74 each, for a total of \$19,501.67.

In 2018-2019, the development and implementation of internal policies, training, and procedures relating to the purchase, installation and stocking of feminine hygiene products is 3 hours, for a total of \$191.40. In the same year, 2018-2019, the costs for training certificated, classified and other personnel to administer the availability of feminine hygiene products in the district's restrooms totals \$2,132.48. The equipment costs relating to installing dispensers in the school restrooms totals \$2,034.96.

**Conclusion**

Based on the above, the cost claimed by the claimant regarding labor costs are very reasonable based on the time estimated to perform the tasks. Based on the above information, claimant requests that the Test Claim activities be approved as a reimbursable mandate.

Very truly yours,

ARTIANO SHINOFF



Arthur M. Palkowitz

AMP:kaf

**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.

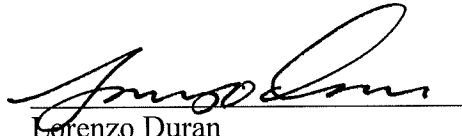
On February 15, 2019, I served the:

- **Claimant's Rebuttal Comments filed February 15, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands 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 February 15, 2019 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
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(916) 323-3562



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/9/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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**RECEIVED**  
March 26, 2019  
*Commission on  
State Mandates*

**GAVIN NEWSOM - GOVERNOR**

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

March 26, 2019

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

Dear Ms. Halsey:

As requested in your letter dated March 5, 2019, the Department of Finance (Finance) has reviewed the Draft Proposed Decision for test claim 18-TC-01 titled "Public School Restrooms: Feminine Hygiene Products" and hereby submits the following comments.

We continue to have concerns regarding some of the costs in the Draft Proposed Decision. For example, the claimant Desert Sands Unified School District (Claimant) does not outline whether all costs will be ongoing or one-time. Finance contends that certain costs, such as development and implementation of policies, and purchase and installation of dispensers, are one-time costs which should not need to be repeated in ongoing years.

Additionally, the labor costs in the Draft Proposed Decision do not support the actual costs identified by Claimant in the test claim. On page 7 and page 26 of the Proposed Decision, estimated labor costs for school custodians to refill dispensers total \$32,387.04, based on an hourly rate of \$27.54 for 13 minutes per day of labor over 80 instructional days. However, on page 7 of the test claim, the Claimant declares 0.13 minutes per day to refill stock, as well as 180 total instructional days. Given the significant difference in the resulting calculation, Finance would like further clarification on the Claimant's identified costs. Finally, we continue to dispute the significant custodial cost to refill dispensers, as the Claimant has not identified the number of schools in its district required to comply with the measure or the number of restrooms in each school.

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

Sincerely,

Jeff Bell  
Program Budget Manager

## DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

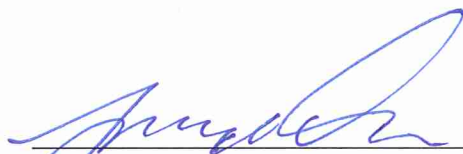
On March 28, 2019, I served the:

- **Finance's Comments on the Draft Proposed Decision filed March 26, 2019**
- **Claimant's Comments on the Draft Proposed Decision filed March 26, 2019**

*Public School Restrooms: Feminine Hygiene Products*, 18-TC-01  
Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)  
Desert Sands Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 28, 2019 at Sacramento, California.



Lorenzo Duran  
Commission on State Mandates  
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Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/22/19

**Claim Number:** 18-TC-01

**Matter:** Public School Restrooms: Feminine Hygiene Products

**Claimant:** Desert Sands Unified School District

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STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

PUBLIC MEETING

**RECEIVED**

JUN 24 2019

**COMMISSION ON  
STATE MANDATES**

FRIDAY, MAY 24, 2019

10:15 A.M.

STATE CAPITOL BUILDING

ROOM 447

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**ORIGINAL**

REPORTED BY:

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**A P P E A R A N C E S**

**COMMISSIONERS PRESENT**

GAYLE MILLER  
Representative for KEELY BOSLER, Director  
Department of Finance  
(Chair of the Commission)

YVETTE STOWERS  
Representative for BETTY T. YEE  
State Controller  
(Vice Chair of the Commission)

ANDRE RIVERA  
Representative for FIONA MA  
State Treasurer

JEANNIE LEE  
Representative for KATE GORDON, Director  
Office of Planning & Research

LEE ADAMS III  
Sierra County Supervisor  
Local Agency Member

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member  
Local Agency Member

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**COMMISSION STAFF**

HEATHER A. HALSEY  
Executive Director

HEIDI PALCHIK  
Assistant Executive Director

MATTHEW B. JONES  
Senior Commission Counsel

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*A P P E A R A N C E S   C O N T I N U E D*

ELENA WILSON  
Commission Counsel

CAMILLE N. SHELTON  
Chief Legal Counsel

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*PUBLIC PARTICIPANTS*

SUSAN GEANACOU  
California Department of Finance

ARTHUR PALKOWITZ  
Claimant Desert Sands Unified School District

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SACRAMENTO, CALIFORNIA

FRIDAY, MAY 24, 2019, 10:15 A.M.

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CHAIRPERSON MILLER: So we will call the meeting on the Commission on State Mandates and call it to order.

I have a couple housekeeping notes. Obviously, this is my first time so go easy on me, and I will do my best.

So at the table near the end of the dais, over there, are the copies of the meeting notice, the agenda, new filings, witness lists, and the electronic public hearing binder. It is also over there, on the laptop, if anyone wants access to it.

Thank you for that.

At the witness table, the claimant and local agency interested parties sit facing the center of the dais, and state agency parties and interested parties sit to the claimant's right.

The restrooms are down the hall, near the elevators. And please take note of the emergency exits in this room, which I don't know that I have, but it looks like it's right there and back here.

And, finally, Heather, will you please call the roll.

MS. HALSEY: Mr. Adams.

1 MEMBER ADAMS: Here.

2 MS. HALSEY: Ms. Lee.

3 MEMBER LEE: Here.

4 MS. HALSEY: Ms. Miller.

5 CHAIRPERSON MILLER: Here.

6 MS. HALSEY: Ms. Olsen.

7 MEMBER OLSEN: Here.

8 MS. HALSEY: Ms. Ramirez.

9 MEMBER RAMIREZ: Here.

10 MS. HALSEY: Mr. Rivera.

11 MEMBER RIVERA: Here.

12 MS. HALSEY: And Ms. Stowers.

13 MEMBER STOWERS: Here.

14 MS. HALSEY: And before we get going, I did want to

15 introduce our new Commission person, Ms. Gayle Miller.

16 Ms. Miller is the chief deputy director of policy for

17 the Department of Finance.

18 Prior to her work at Finance, Ms. Miller was the

19 senior policy advisor for the California Department of

20 Tax and Fee Administration.

21 And prior to that, she was deputy

22 controller/director of policy in the Office of the State

23 Controller. She served as principal consultant in the

24 Office of the California State Senate, of President Pro

25 Tem, and held several other positions in the California

1 State Senate, including consultant in the Office of  
2 Research, staff director for the Government and Finance  
3 Committee, and principle consultant at the Revenue and  
4 Taxation Committee.

5 She was director of Government Affairs at Anthem  
6 Blue Cross; legislative director in the office of  
7 Assemblyman Alan Lowenthal; and legislative aide and  
8 assembly fellow in the office of Assemblymember Tom  
9 Torlakson. All experience that will serve the  
10 Commission well.

11 Welcome, Gayle.

12 CHAIRPERSON MILLER: Thank you.

13 Now that I feel incredibly old.

14 (Laughter)

15 CHAIRPERSON MILLER: Are there -- on Item 1, the  
16 minutes, are there any objections to or corrections of  
17 the minutes from March 22nd, 2019?

18 MEMBER OLSEN: I will move adoption.

19 MEMBER STOWERS: Second.

20 CHAIRPERSON MILLER: Great.

21 Moved by Ms. Olsen; second by Ms. Stowers.

22 We are -- all those in favor of adopting the  
23 minutes, signify by saying "aye."

24 (Ayes)

25 CHAIRPERSON MILLER: Any opposed? Abstentions?

10

1 (No response)

2 CHAIRPERSON MILLER: The minutes are adopted.

3 Thank you.

4 MS. HALSEY: And now we will take up public comment  
5 for matters not on the agenda. Please note that the  
6 Commission cannot take action on items not on the  
7 agenda. However, it can schedule issues raised by the  
8 public for consideration at future meetings.

9 CHAIRPERSON MILLER: Is there any public comment?

10 (No response)

11 CHAIRPERSON MILLER: Hearing no public comment,  
12 we'll move to the next item.

13 Since there are no items proposed for consent,  
14 let's move to the Article 7 portion of the hearing.

15 Will the parties and witnesses for Items 3 and 4  
16 please rise.

17 (Parties/witnesses stood to be sworn or  
18 affirmed.)

19 MS. HALSEY: Item 2 is reserved for appeals of  
20 Executive Director decisions, and there are no appeals  
21 to consider for this hearing.

22 Senior Commission Counsel Matt Jones will present  
23 Item 3, a test claim on Peace Officer Training: Mental  
24 Health/Crisis Intervention.

25 At this time, we would invite the parties and

11

1 witnesses for Item 3 to please come to the table. Also,  
2 the claimant representative please let us know -- sorry.  
3 Also, the claimant representative let us know that the  
4 claimants agree with the proposed decision and would  
5 like to thank staff for their time and work on this  
6 matter; and also let the members know that they will not  
7 be attending today's hearing.

8 MR. JONES: Good morning.

9 This test claim addresses law enforcement training  
10 courses developed by the Commission on Peace Officer  
11 Standards and Training, POST, regarding law enforcement  
12 interaction with persons with mental illness or  
13 intellectual disability.

14 As explained in the proposed decision, staff  
15 recommends that the Commission partially approve this  
16 test claim with respect to Penal Code section 13515.28,  
17 which mandates local law enforcement agencies to ensure  
18 their field training officers attend one-time training  
19 on crisis intervention and behavioral health, unless  
20 they received similar training in the last 24 months.

21 Reimbursement is not required for local law  
22 enforcement employers to develop or present the training  
23 since these activities are not mandated by the State.

24 Staff further recommends that the Commission deny  
25 all other statutes and code sections pled in the claim.

12



1       Accordingly, staff recommends that the Commission  
2       adopt the proposed decision to partially approve this  
3       test claim and authorize staff to make any technical,  
4       nonsubstantive changes to the proposed decision  
5       following the hearing.

6       CHAIRPERSON MILLER: Great.

7       Would the parties and witnesses please state your  
8       full name for the record, please.

9       MS. GEANACOU: Good morning. Susan Geanacou,  
10      Department of Finance.

11      CHAIRPERSON MILLER: Thank you.

12      Is there any public comment on this item?

13      And I understand, the claimant is not here today.

14      Are there any questions from members on this claim?

15      MEMBER RAMIREZ: I do have a comment.

16      CHAIRPERSON MILLER: Ms. Ramirez.

17      MEMBER RAMIREZ: As a representative of a city  
18      with, you know, our own police department, Oxnard Police  
19      Department, I just want to take an opportunity to say  
20      what an important issue this is, because our law  
21      enforcement now, more and more, is being asked to  
22      interact with folks with mental issues, and it's so  
23      critical. So just a little comment here, because it's  
24      near and dear to my heart.

25      So I would like to move the recommended action.

1 CHAIRPERSON MILLER: Thank you. I appreciate that.  
2 MEMBER RIVERA: I will second.  
3 CHAIRPERSON MILLER: Thank you, Mr. Rivera.  
4 Moved by Ms. Ramirez; second by Mr. Rivera.  
5 Is there any further discussion?  
6 MEMBER OLSEN: Does Finance have any comments?  
7 MS. GEANACOU: No, we don't.  
8 Thank you. I was going to speak up if there was  
9 any concerns.  
10 We support the --  
11 MEMBER OLSEN: We should ask.  
12 MS. GEANACOU: That's fine. I appreciate that.  
13 We support the staff analysis on this matter.  
14 CHAIRPERSON MILLER: Great. I appreciate that.  
15 Thank you very much.  
16 There has been a motion and a second.  
17 It has been moved.  
18 I think I already did all of this, right?  
19 So Heather, please call the roll.  
20 MS. HALSEY: Mr. Adams.  
21 MEMBER ADAMS: Aye.  
22 MS. HALSEY: Ms. Lee.  
23 MEMBER LEE: Aye.  
24 MS. HALSEY: Ms. Miller.  
25 CHAIRPERSON MILLER: Aye.

14

1 MS. HALSEY: Ms. Olsen.  
2 MEMBER OLSEN: Aye.  
3 MS. HALSEY: Ms. Ramirez.  
4 MEMBER RAMIREZ: Aye.  
5 MS. HALSEY: Mr. Rivera.  
6 MEMBER RIVERA: Aye.  
7 MS. HALSEY: Ms. Stowers.  
8 MEMBER STOWERS: Aye.  
9 CHAIRPERSON MILLER: Great. Thank you. Motion  
10 carries. Thank you very much.  
11 Thank you, Ms. Geanacou.  
12 MS. HALSEY: Item 4 is a test claim on Public  
13 School Restrooms. Elena Wilson will present the -- I'm  
14 sorry. Public Restrooms: Feminine Hygiene Products.  
15 Elena Wilson will present this item.  
16 And, at this time, we invite the parties and  
17 witnesses for Item 4 to come to the table.  
18 Thank you.  
19 CHAIRPERSON MILLER: Thank you. Parties and  
20 witnesses, please state your names for the record.  
21 MR. PALKOWITZ: Good morning. Art Palkowitz on  
22 behalf of the claimant, Desert Sands Unified School  
23 District.  
24 MS. GEANACOU: Susan Geanacou, Department of  
25 Finance.

1 CHAIRPERSON MILLER: Are there -- is there any  
2 public comment on this item?

3 (No response)

4 MR. PALKOWITZ: If that includes the claimant, then  
5 I do have some comments.

6 MS. HALSEY: We'll have the attorney introduce the  
7 item first.

8 CHAIRPERSON MILLER: Introduce the item?

9 MS. HALSEY: Yeah.

10 CHAIRPERSON MILLER: Thank you.

11 MS. WILSON: Good morning. This test claim, for  
12 the first time, requires certain public schools to  
13 stock, at all times, at least 50 percent of the school's  
14 restrooms with feminine hygiene products, which are  
15 defined as tampons and sanitary napkins.

16 In addition, the test claim statute prohibits  
17 schools from charging for any menstrual products,  
18 including feminine hygiene products, provided to pupils.

19 Staff finds that the test claim statute imposes a  
20 reimbursable state mandated program, beginning  
21 January 1st, 2019, to stock 50 percent of the school's  
22 restrooms with feminine hygiene products at all times at  
23 no cost to pupils. The mandate applies only to certain  
24 Title 1 eligible public schools that maintain any  
25 combination of classes from grade 6 to grade 12, as

1 specified in the proposed decision.

2 Accordingly, staff recommends the Commission adopt  
3 the proposed decision approving the test claim and  
4 authorize staff to make any technical, nonsubstantive  
5 changes following the hearing.

6 CHAIRPERSON MILLER: Thank you very much.

7 Now, sir, you may proceed.

8 Thank you.

9 MR. PALKOWITZ: Thank you.

10 We thank staff for their analysis and appreciate  
11 their recommendation to have this a reimbursable  
12 mandate.

13 We are -- I would like to comment on one item, is  
14 that the costs relating to dispensers was not included  
15 as a reimbursable mandate, but what was included were  
16 the feminine products.

17 We believe it was the legislator's intent that the  
18 dispensers' one-time cost to install and purchase should  
19 also be a cost that's reimbursable. It was foreseen by  
20 the legislator that there would be dispensers installed  
21 in the restrooms.

22 CHAIRPERSON MILLER: Mr. Palkowitz --

23 MR. PALKOWITZ: Yes.

24 CHAIRPERSON MILLER: -- we appreciate these  
25 comments, but this will be a matter in Parameters and

1 Guidelines.

2 MR. PALKOWITZ: I appreciate that, Madam  
3 Chairperson.

4 I thought that this is an opportunity for me to  
5 address that issue. We provided evidence to support  
6 that. I really feel this would be an appropriate time  
7 to deal with that, versus coming back at another hearing  
8 and have my client incur additional costs.

9 But if that's the preference, then I will reserve  
10 my opportunity, at that time, to make our presentation  
11 regarding the dispensers.

12 CHAIRPERSON MILLER: Absolutely. I appreciate  
13 that.

14 Just because of the -- Ms. Shelton, would you like  
15 to comment on that?

16 MS. SHELTON: It was just the staff position that  
17 the purchase and cost of dispensers is not written in  
18 the plain language of the test claim statute, so that is  
19 something that would be addressed during Parameters and  
20 Guidelines.

21 When we do Parameters and Guidelines, you know, you  
22 have an opportunity to respond to the expedited  
23 Parameters and Guidelines. We also review the record  
24 for the test claim.

25 So if you want to make your testimony today, you

18

1 can.

2 MS. HALSEY: And, I'm sorry. I just wanted to  
3 clarify a little bit further, that this hearing is on  
4 whether the test claim statute mandates a new program  
5 higher level of service, and, based on that language, we  
6 find, yes, it does.

7 Then the Government Code allows for a claimant or  
8 even a state agency to propose reasonably necessary  
9 activities as a result of those mandated activities, but  
10 that's -- that's in the Parameters and Guidelines  
11 provision and not in the test claim provision, and  
12 that's the reason for the distinction between when it  
13 should be done and how it should be done.

14 MR. PALKOWITZ: I estimate another minute or two.

15 CHAIRPERSON MILLER: Absolutely.

16 MR. PALKOWITZ: I would just like to put on the  
17 record --

18 CHAIRPERSON MILLER: Please.

19 MR. PALKOWITZ: Thank you.

20 CHAIRPERSON MILLER: Thank you.

21 MR. PALKOWITZ: It's our position that the -- the  
22 dispensers should have been included in this analysis.  
23 Otherwise, Article XIII B is violated in that there was  
24 a shifting of the financial responsibility to the local  
25 agencies.

1       We believe that it is intended to be part of it,  
2 based on the legislative history, and also the Senate  
3 Appropriation looking at that issue.

4       The code section that was amended states the  
5 feminine hygiene products shall be stocked in the  
6 restrooms. We believe that the dispensers are a  
7 reasonable method of doing that. The code section, on  
8 its face, does not say the feminine products will be  
9 placed there or laid down there or someone will  
10 personally distribute them. So we feel that it is  
11 appropriate that the dispensers be reimbursed.

12       And if the process is to have that done during the  
13 Parameters and Guidelines, we look forward to that  
14 opportunity.

15       CHAIRPERSON MILLER: I appreciate that. Thank you,  
16 sir.

17       With that, are there questions from members?

18       MEMBER OLSEN: I will move the staff  
19 recommendation.

20       CHAIRPERSON MILLER: Ms. Stowers, did you have a  
21 question?

22       MEMBER STOWERS: I will second that motion. But I  
23 want to make a comment as well. I just want to -- I  
24 appreciate the analysis, providing that these products  
25 are a part of the test claim. And I look forward to



1 reading the P&G and having, you know, a reasonableness  
2 to include the dispensers. Also looking forward, the  
3 overall cost should be decreased as we are looking to  
4 have these items to be excluded from sales tax. So  
5 thank you to everyone.

6 CHAIRPERSON MILLER: Great. Thank you,  
7 Ms. Stowers.

8 Any other questions?

9 MEMBER RAMIREZ: I just want to say --

10 CHAIRPERSON MILLER: Oh -- please.

11 MEMBER RAMIREZ: I just want to say, it's about  
12 time, as well.

13 (Laughter)

14 CHAIRPERSON MILLER: I appreciate that.

15 MS. GEANACOU: Yes, thank you from Finance.

16 We support the staff analysis, and we'll address  
17 any cost or reimbursable activities at the Parameters  
18 and Guidelines phase.

19 CHAIRPERSON MILLER: Great. I appreciate that.  
20 Thank you.

21 Ms. Olsen, did you have a comment?

22 MEMBER OLSEN: I am moving the recommendation with  
23 great pleasure.

24 MEMBER STOWERS: Second.

25 CHAIRPERSON MILLER: Moved by Ms. Olsen; seconded

1 by Ms. Stowers.

2 If there's no further questions, will you please  
3 call the roll, Ms. Halsey.

4 MS. HALSEY: Mr. Adams.

5 MEMBER ADAMS: Aye.

6 MS. HALSEY: Ms. Lee.

7 MEMBER LEE: Aye.

8 MS. HALSEY: Ms. Miller.

9 CHAIRPERSON MILLER: Aye.

10 MS. HALSEY: Ms. Olsen.

11 MEMBER OLSEN: Aye.

12 MS. HALSEY: Ms. Ramirez.

13 MEMBER RAMIREZ: Aye.

14 MS. HALSEY: Mr. Rivera.

15 MEMBER RIVERA: Aye.

16 MS. HALSEY: Ms. Stowers.

17 MEMBER STOWERS: Aye.

18 CHAIRPERSON MILLER: And the motion carries, with  
19 great pleasure as well, I might add.

20 MR. PALKOWITZ: Thank you very much.

21 CHAIRPERSON MILLER: Thank you, sir. We look  
22 forward to seeing you again.

23 MS. HALSEY: Item 5 is reserved for county  
24 applications for a finding of significant financial  
25 distress, or SB 1033 applications. No SB 1033

1 applications have been filed.

2 Assistant Executive Director Heidi Palchik will  
3 present Item 6, the Legislative Update.

4 MS. PALCHIK: Good morning.

5 We have three bills to discuss:

6 First, SB 287, Commission on State Mandates test  
7 claims filing date. We first saw the language of this  
8 bill in the education omnibus bill last session. This  
9 bill is specified that, for purposes of filing a test  
10 claim based on the date of incurring increased costs,  
11 the phrase "within 12 months" means by June 30 of the  
12 fiscal year following the fiscal year in which increased  
13 costs were first incurred by the claimant. This bill  
14 was heard on April 8th and placed on the Senate  
15 Appropriations Committee Suspense File and may be heard  
16 at a later date.

17 Next, AB 400, State Mandates. It is a spot bill,  
18 according to the author's office.

19 Finally, AB 1471, State-mandated local costs  
20 notification, proposes language that would specify that  
21 reimbursement of lost revenue be provided to certain  
22 local agencies as a result of delayed state action,  
23 pursuant to the same procedures as filing a test claim  
24 with the Commission.

25 Also, the provisions of this bill would be exempt

1 from the exceptions under Government Code 17556, and  
2 this bill is now in Assembly Appropriations, and staff  
3 will continue to monitor legislation for bills that  
4 impact the mandates process.

5 CHAIRPERSON MILLER: Thank you.

6 MS. HALSEY: Thank you.

7 Chief Legal Counsel Camille Shelton will present  
8 Item 7, the Chief Legal Counsel Report.

9 MS. SHELTON: Good morning.

10 Paradise Irrigation District, and the other  
11 claimants on the Water Conservation Test Claim, have  
12 filed a petition for review in the California Supreme  
13 Court to challenge the Court of Appeals decision, which  
14 affirmed the denial of the test claim.

15 We haven't received any recent decisions, and we do  
16 have one court hearing date, set for June 7th, to hear  
17 the remand of discharge of stormwater runoff.

18 And that's all I have.

19 CHAIRPERSON MILLER: Thank you.

20 MS. HALSEY: And Item 8 is Executive Director's  
21 Report.

22 For our budget, the Commission's operating budget  
23 was approved by both subject subcommittees and is  
24 expected to be enacted as proposed.

25 And on March 26th, the Assembly Budget Subcommittee

1 4 voted to approve the local agencies subvention portion  
2 of the Commission's budget, as proposed in the  
3 Governor's budget, as did Senate Budget Subcommittee 4  
4 on May 9th, 2019.

5 The Assembly Subcommittee inadvertently described  
6 this item as 8885 -- or 8855 instead of 8885, so that  
7 would be to the Controller's budget instead of to the  
8 Commission's, but that was inadvertent and will be  
9 corrected going forward.

10 The governor released his May revision of the  
11 proposed budget on Thursday, May 9th, 2019, with no  
12 changes to the Commission's budget, as originally  
13 proposed.

14 Workload update. After this hearing, there are 40  
15 pending test claims, 39 of which are regarding  
16 stormwater NPDES permits. And there are also two active  
17 Parameters and Guidelines. Two statewide cost estimates  
18 are pending inactive, and also there is one additional  
19 Parameters and Guidelines and one additional statewide  
20 cost estimate, both regarding stormwater NPDES permits  
21 that are on inactive status pending the outcome of  
22 litigation regarding the test claim decisions underlying  
23 those matters.

24 In addition, there is one Parameters and Guidelines  
25 amendment on inactive status pending the outcome of

1 litigation in the CSBA case, which is currently pending  
2 before the California Supreme Court.

3 And we also have two requests for mandate  
4 redetermination that are pending.

5 And, finally, there are five incorrect reduction  
6 claims pending.

7 Commission staff currently expects to complete all  
8 currently pending test claims and IRCs by approximately  
9 the January 2024 Commission hearing, depending on  
10 staffing and other workload. And some of those test  
11 claims may be heard and decided earlier than currently  
12 indicated if they are consolidated for hearing, which  
13 will be determined at a later time.

14 Please check the Executive Director's Report to see  
15 if an item you are interested in is coming up, and you  
16 can also use our pending case load documents on our  
17 website, which are updated at least bimonthly, to see  
18 when something is tentatively set for hearing.

19 Please expect to receive draft proposed decisions  
20 on all test claims and incorrect reduction matters for  
21 review and comment at least eight weeks prior to the  
22 hearing date, and a proposed decision approximately two  
23 weeks before the hearing.

24 And, finally, a reminder to all parties and  
25 interested parties to please notify Commission staff not

1 later than the Wednesday prior to the hearing that you,  
2 or a witness you are bringing, plan to testify, and  
3 please include the names of the people who will be  
4 speaking for inclusion on the witness list, as staff is  
5 no longer sending reminder e-mails.

6 And that is all I have.

7 CHAIRPERSON MILLER: Thank you, Heather.

8 So the Commission will now meet in closed executive  
9 session. Pursuant to Government Code section 11126(e)  
10 to confer with and receive advice from legal counsel for  
11 consideration and action, as necessary and appropriate,  
12 upon the pending litigation listed on the published  
13 notice and agenda; and to confer with and receive advice  
14 from legal counsel regarding potential litigation. The  
15 Commission will also confer on personnel matters  
16 pursuant to Government Code section 11126(a)(1).

17 We will reconvene in open session in approximately  
18 15 minutes.

19 (Closed session was held from  
20 10:35 a.m. to 10:42 a.m.)

21 CHAIRPERSON MILLER: The Commission met in closed  
22 executive session pursuant to Government Code section  
23 11126(e)(2) to confer with and receive advice from legal  
24 counsel for consideration and action, as necessary and  
25 appropriate, upon the pending litigation listed on the

27

1 public notice and agenda; and to confer with and receive  
2 advice from legal counsel regarding potential litigation  
3 and pursuant to Government Code section 11126(a)(1) to  
4 confer on personnel matters.

5 Thank you.

6 With no further business to discuss, I will  
7 entertain a motion to adjourn.

8 MEMBER RAMIREZ: So moved.

9 CHAIRPERSON MILLER: Moved by Ms. Ramirez.

10 Do we need a second for that motion?

11 MEMBER OLSEN: I will second it.

12 CHAIRPERSON MILLER: Thank you. Great.

13 MEMBER OLSEN: We will all second it.

14 CHAIRPERSON MILLER: Yes. Exactly.

15 All those in favor of adjourning, say "aye."

16 (Ayes)

17 CHAIRPERSON MILLER: All those opposed?

18 (No response)

19 CHAIRPERSON MILLER: Meeting is adjourned.

20 Thank you.

21 (Proceedings concluded at 10:43 a.m.)

22 ---o0o---

23

24

25



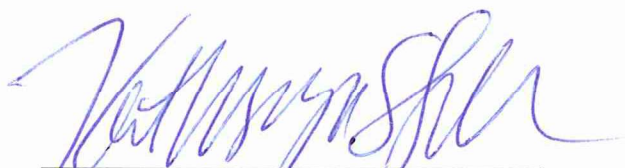
CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter  
of the State of California, do hereby certify:

That I am a disinterested person herein; that the  
foregoing proceedings was reported in shorthand by me,  
Kathryn S. Swank, a Certified Shorthand Reporter of the  
State of California, and thereafter transcribed into  
typewriting.

I further certify that I am not of counsel or  
attorney for any of the parties to said proceedings nor  
in any way interested in the outcome of said  
proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 23rd day of June 2019.



KATHRYN S. SWANK, CSR  
Certified Shorthand Reporter  
License No. 13061

CONCURRENCE IN SENATE AMENDMENTS

AB 10 (Cristina Garcia)

As Amended September 1, 2017

Majority vote

ASSEMBLY: 68-6 (May 31, 2017) SENATE: 39-0 (September 6, 2017)

---

Original Committee Reference: **ED.**

**SUMMARY:** Requires a public school serving students in any of grades 6 to 12, that meets the 40% pupil poverty threshold required to operate a federal Title I schoolwide program, to stock at least 50% of the school's restrooms with feminine hygiene products at all times and to provide those products at no charge.

**The Senate amendments** specify that schools may not charge students for menstrual products and add co-authors.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- 1) One-time state reimbursable mandated costs, ranging from the millions to tens of millions of dollars in Proposition 98 General Fund, for the bill's requirement for Title I schools serving grades 6 to 12 to stock at least 50% of their restrooms with feminine hygiene products. The precise cost will depend on the actual number of bathrooms that will require dispensers to be installed as well as the installation cost for each dispenser, which can vary from anywhere as low as several hundred dollars to as high as two to three thousand dollars.
- 2) Ongoing state reimbursable mandated costs, likely in the hundreds of thousands of dollars in Proposition 98 General Fund, to stock the dispensers at no charge.

**COMMENTS:** According to the author, "Feminine hygiene products are a necessity for the health, well-being, and full participation for those who menstruate. No person who menstruates should ever need to worry about access to tampons or sanitary pads. These products are medical necessities for half of our population and as a state California should not wait to lead the country to increase access to these products."

**Analysis Prepared by:** Debbie Look / ED. / (916) 319-2087

FN: 0001774



Home / Learning Support / Facilities / Facility Design

## K-12 Toilet Requirement Summary

A summary of K-12 toilet requirements by grade level and male/female.

Schools are considered an Educational (E) occupancy for determining the number of toilets, urinals, lavatories, and drinking fountains within the *California Plumbing Code*.

### 2013 and 2016 California Plumbing Code

All Grades and Staff	Toilets and Urinals	Lavatories	Drinking Fountains
<b>Male</b>	1 toilet per 50  1 urinal per 100	1 per 40	1 per 150
<b>Female</b>	1 toilet per 30	1 per 40	1 per 150

The figures shown are based upon one fixture being the minimum required for the number of persons indicated or any fraction thereof.

The total number of required toilets for females shall not be less than the total number of required toilets and urinals for males. This requirement shall not apply when single occupancy toilet facilities are provided for each gender in an E occupancy with an occupant load of less than 50. Either:

1. The required urinal shall be permitted to be omitted or
2. If installed, the urinal shall not require a second toilet be provided for the female.

California Department of Education (CDE) Notes:

*California Code of Regulations, Title 5, Section 14030*, requires that toilets for kindergarten students be provided in the kindergarten classroom or in the kindergarten complex. These fixtures should be mounted at a height appropriate for student use.

The California Plumbing Code does not require specific toilets for staff and students. However, for safety and liability concerns CDE recommends that separate toilets be provided for staff.

CDE recommends that the location of toilets and water fountains be distributed throughout the campus to ensure access.

The entrance to toilet rooms must be able to be supervised.

[2013 California Plumbing Code - Chapter 4 Plumbing Fixtures and Fixture Fittings](#) (PDF)

### 2010 California Plumbing Code Table 4-1

**Male**

<b>Grade/Staff</b>	<b>Water Closets (Fixtures per person) <u>14</u></b>	<b>Urinals (Fixtures per person) <u>5</u>, <u>10</u></b>	<b>Lavatories (Fixtures per person)</b>	<b>Drinking Fountains (Fixtures per person) <u>3</u>, <u>13</u>, <u>18</u></b>
<b>Kindergarten (toilets to be within kindergarten complex)</b>	1 toilet serves 1-20  2 toilets serve 21-50  Over 50, add 1 toilet for every 50 people	None	1 serves 1-25  2 serves 26-50  Over 50, add 1 fixture for each additional 50 persons	1 per 150 ( <u>12</u> )
<b>Elementary</b>	1 toilet per 30	1 per 75	1 per 35	1 per 150 ( <u>12</u> )
<b>Secondary</b>	1 toilet per 40	1 per 35	1 per 40	1 per 150 ( <u>12</u> )
<b>Staff</b>	1 toilet serves 1-15  2 toilets serve 16-35  3 toilets serve 36-55  Over 55, add 1 fixture for each additional 40 persons	1 per 50	1 per 40	No reference

**Female**

<b>Grade/Staff</b>	<b>Water Closets (Fixtures per person) <u>14</u></b>	<b>Lavatories (Fixtures per person)</b>	<b>Drinking Fountains (Fixtures per person) <u>3</u>, <u>13</u>, <u>18</u></b>
<b>Kindergarten (toilets to be within kindergarten complex)</b>	1 toilet serves 1-20  2 toilets serve 21-50  Over 50, add 1 toilet for every 50 people	1 serves 1-25  2 serves 26-50  Over 50, add 1 fixture for each additional 50 persons	1 per 150 ( <u>12</u> )

<b>Elementary</b>	1 toilet per 25	1 per 35	1 per 150 ( <u>12</u> )
<b>Secondary</b>	1 toilet per 30	1 per 40	1 per 150 ( <u>12</u> )
<b>Staff</b>	1 toilet serves 1-15  2 toilets serve 16-35  3 toilets serve 36-55  Over 55, add 1 fixture for each additional 40 persons	1 per 40	No reference

## Footnotes

<sup>3</sup> Drinking fountains shall not be installed in toilet rooms.

<sup>5</sup> For each urinal added in excess of the minimum required, one water closet may be deducted. The number of water closets shall not be reduced to less than two-thirds ( $\frac{2}{3}$ ) of the minimum requirement.

<sup>10</sup> General. In applying this schedule of facilities, consideration shall be given to the accessibility of the fixtures. Conformity purely on a numerical basis may not result in an installation suited to the needs of the individual establishment. For example, schools should be provided with toilet facilities on each floor having classrooms.

- a. Surrounding materials, wall and floor space to a point two feet in front of urinal lip and four feet above the floor, and at least two feet to each side of the urinal shall be lined with non-absorbent materials.
- b. Trough urinals shall be prohibited.

<sup>12</sup> Where food is consumed indoors, water stations may be substituted for drinking fountains. Offices or public buildings for use by more than six persons shall have one drinking fountain for the first 150 persons and one additional fountain for each 300 persons thereafter.

<sup>13</sup> There shall be a minimum of one drinking fountain per occupied floor in schools, theaters, auditoriums, dormitories, offices, or public buildings.

<sup>14</sup> The total number of water closets for females shall be at least equal to the total number of water closets and urinals required for males. This requirement shall not apply to retail or wholesale stores.

<sup>18</sup> A drinking fountain shall be required in occupancies of 30 or less. When a drinking fountain is not required, then footnotes 3, 12, and 13 are not applicable.

## Note

Please be aware these are minimum requirements; more fixtures or toilet rooms may be required to adequately serve students and staff in some facility layouts.

Toilets are to be provided based on the population of each gender at each school site. As new facilities (with additional students and staff) are added, including portables, additional toilet facilities should be added to meet building code requirements.

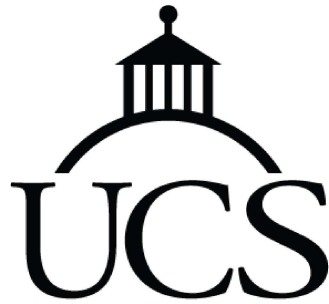
**Prior to 1994 Code Reference *Uniform Building Code* Section 805**

<b>Grade/Staff</b>	<b>Male</b>	<b>Female</b>
<b>Kindergarten</b>	No reference	No reference
<b>Elementary</b>	1 urinal per 30 1 toilet per 100	1 toilet per 35
<b>Secondary</b>	1 urinal per 30 1 toilet per 100	1 toilet per 45
<b>Staff</b>	No reference	No reference

**Questions: Fred Yeager | [fyeager@cde.ca.gov](mailto:fyeager@cde.ca.gov) | 916-327-7148**

Last Reviewed: Monday, June 18, 2018

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## THE BROWN UNIVERSITY UNDERGRADUATE COUNCIL OF STUDENTS

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### PROJECT TAMPON OVERVIEW

#### BACKGROUND:

Project Tampon was started by 2016-2017 UCS as an effort to bring free menstrual products to students at Brown. During its first year, the project was entirely funded and run by the UCS.

The 2017-2018 UCS continued restocking 52 bathrooms campus-wide and collected both distribution and usage data. By the end of the year, UCS's data showed continued usage from students. 2018-2019 UCS was then able to successfully institutionalize funding and distribution from Brown's Facilities Management moving forward.

#### FAQ:

What kind of response did UCS get from the administration initially?

- UCS took the initiative to plan and launch this project independently of the administration to ensure that it could begin immediately at the opening of the 2016 semester. UCS gave a courtesy notice to our Health Services director just before the school-wide announcement was released. The University Communications Office was contacting us soon after the initial project announcement to get information, and we imagine the administration might have enjoyed more notice, but the response was quite positive.
- Here's a statement from Brown spokesperson Brian Clar to the *Huffington Post* about the project, to give you an idea of the formal administration response: "The UCS students took tremendous initiative in the effort to provide tampons and sanitary products in restrooms on campus. We expect that UCS will continue to solicit feedback on this new initiative and collect data on the use of these products. We will be interested to learn what they find as they assess the effectiveness of the program moving forward."

UCS hoped to collect some numbers on the reception of this program so that we could advocate for its becoming a permanent/University-supported initiative, but wanted to begin it ourselves to avoid possible bureaucratic hurdles.

Did you receive any initial support from any departments on campus (health services)?

- While Health Services was not involved in the planning of the project, their response was positive. The *Brown Daily Herald* (our campus paper) **included**, in an article about the project, our Health Services Director Unab Khan expressing hope that the initiative will promote conversation about every person's right to healthy sexuality.

Did the Brown Undergraduate Council of Students absorb all of the costs for the products, or did you receive any monetary help from departments on campus?



- UCS 2016-2017 received funding for the project through Brown's Undergraduate Finance Board (UFB). The Undergraduate Finance Board approves budgets for all Category III student groups at Brown (we categorize student groups based on how long they've been around, which really only affects the funding levels they can get through UFB, and Category III is the "highest" stratum), drawing from student activities fees to budget among over 180 groups. We got the funding through some of the fees UFB is authorized to allocate to various student activities; this may not be feasible at all schools depending on their student group funding structure. We ordered the pads and tampons from Boxed Wholesale, if you're looking for a vendor.
- In 2017-2018, UCS applied to a program called Brown UFunds. Deans and departments across the university used to control their own funding, but in 2017 they all decided to centralize funding through one office, the office of the President, which oversees UFunds. We applied through this and were able to secure the funding we needed to complete the 2017 semester
- Since the program has been institutionalized in 2018, UCS does not pay for any of the tampons

Did members of the council restock the bathrooms each week, or do you have something set up with custodial staff?

- From 2016-2018, council members restocked the bathrooms each week; our Student Wellness committee members handled restocking on a regular basis, since this falls very neatly within their programmatic focus as a committee. The E-Board had been refilling the baskets in the interim before General Body members joined UCS and Student Wellness. Each of the bathrooms we stocked was re-supplied every Sunday, and we also had started to supplementing the stocks in the bathrooms that see the highest traffic on Wednesday each week.
- Once the project was institutionalized at a university level, facilities staff refills the supplies as part of their regular routines

How many bathrooms do you have on campus?

- We started only stocking non-residential bathrooms (i.e., in academic buildings), for a total of 52 bathrooms
- Since facilities has taken on the restocking they have expanded the program to include 30 non-residential buildings with approximately 80 locations.

About how much had this cost you all each week?

- We don't have exact cost breakdowns by week since the tampons and pads aren't distributed by their original package units (which would have uniform prices attached), but our budget for the year was \$8,000 dollars.
- Each order from Boxed costs \$800.50 for 2880 tampons and 2400 pads, and lasts approximately five weeks.

Do you get a selection of products such as regular/ultra tampons, pads, pantyliners?

- We have regular tampons and regular pads, as we hoped an intermediate level of absorbency would be the most useful for the largest number of people. We've been using tampons with plastic applicators since a lot of folks find those easier to use than cardboard applicators. We did discuss pantyliners during the planning phase, but, due in part to budgetary constraints, we decided to focus on providing tampons and pads. I'm sure if you could obtain the funding for it, a wider range of products might be very well received!

How are the products stocked in the bathrooms: in baskets or dispensers?

- The products were initially stored in baskets on the sink or counter space in each bathroom. We purchased plastic baskets because they are affordable and able to withstand more water contact than wicker-type baskets that might have been more aesthetically appealing.
- Since 2018, all dispensers in women's and gender inclusive bathrooms have been converted to dispense at no cost to

students

· For reference, [here](#) is the link to the statement we released when the project launched

## RESOURCES:

Proposal to administration:

[https://docs.google.com/document/d/14lh3NIHdXFnkD3SWhr6SR0yfPz9hfY\\_2hMfHugQACeY/edit](https://docs.google.com/document/d/14lh3NIHdXFnkD3SWhr6SR0yfPz9hfY_2hMfHugQACeY/edit)

Flyer to recruit volunteers:

<https://drive.google.com/drive/u/1/search?q=tampon>

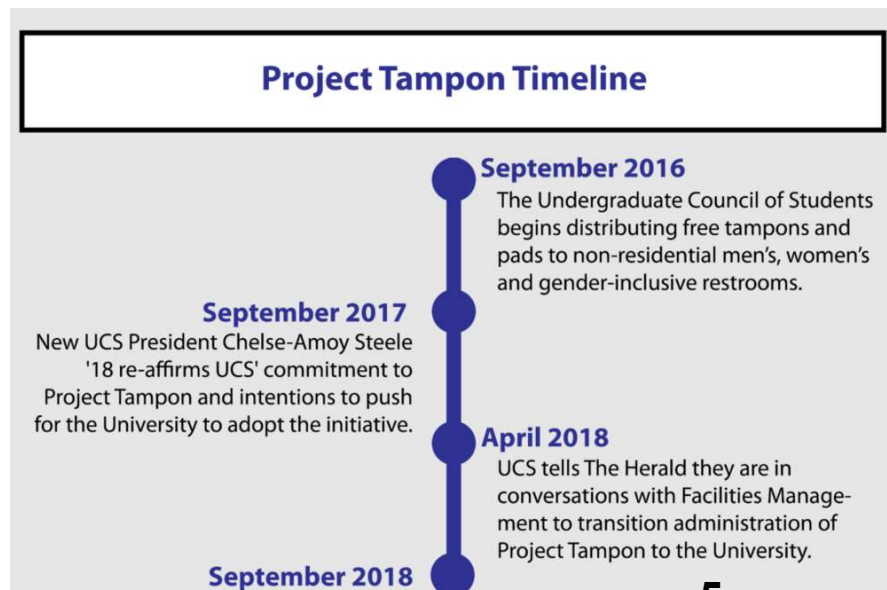
News Articles:

<http://www.browndailyherald.com/2016/09/09/ucs-to-provide-pads-tampons/>

<http://www.browndailyherald.com/2017/10/18/ucs-changes-supplier-project-tampon/>

<http://www.browndailyherald.com/2018/04/26/ucs-asks-facilities-administer-project-tampon/>

<http://www.browndailyherald.com/2018/11/11/facilities-takes-project-tampon/>



New UCS President Shanzé Tahir '19 says UCS will look into Project Tampon's continued administration as University's public plans for the project remain unclear.

**November 2018**

Facilities Management confirms to UCS that it has assumed administration of Project Tampon.

[HTTP://WWW.BROWNDAILYHERALD.COM/2018/11/11/FACILITIES-TAKES-PROJECT-TAMPON/](http://www.browndailyherald.com/2018/11/11/facilities-takes-project-tampon/)



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Products / Feminine Hygiene Vendors and Disposals /



**0468-2**  
**DUAL (30) NAPKIN/ (27) TAMPON VENDOR – SEMI-RECESSED – 25¢, 50¢ OR FREE OPERATION**

Holds 30 napkins and 27 tampons of specified sizes. Doors are held closed with two (2) tumbler locks. Internal coin-box is keyed differently than door locks. Dispensing mechanisms are fastener mounted internally to provide ability to change mechanisms for coinage denomination. Weights for each feed track are supplied.

Unit supplied with SR collar to convert to semi-recessed mounting.

Universal coin mechanism allows for 25¢, 50¢ and free (no coin) operation. Choose appropriate suffix (-25, -50 or -F).

- 0468-2-25 – allows for 25¢ operation
- 0468-2-50 – allows for 50¢ operation
- 0468-2-F – allows Free (no coin) operation

Model Options: 0468-2

▼

BIM OBJECTS ([HTTPS://AMERICANSPECIALTIES.COM/WP-CONTENT/UPLOADS/0468-2.ZIP](https://americanspecialties.com/wp-content/uploads/0468-2.zip))

TECHNICAL DATA SHEET ([HTTPS://AMERICANSPECIALTIES.COM/WP-CONTENT/UPLOADS/0468-21.PDF](https://americanspecialties.com/wp-content/uploads/0468-21.pdf))

Product Specifications

DIMENSIONS	+
INSTALLATION INSTRUCTIONS ( <a href="https://americanspecialties.com/wp-content/uploads/sm-collar-installation.pdf">HTTPS://AMERICANSPECIALTIES.COM/WP-CONTENT/UPLOADS/SM-COLLAR-INSTALLATION.PDF</a> )	>
PRODUCT CARE & MAINTENANCE ( <a href="https://americanspecialties.com/wp-content/uploads/asi-product-care-maintenance.pdf">HTTPS://AMERICANSPECIALTIES.COM/WP-CONTENT/UPLOADS/ASI-PRODUCT-CARE-MAINTENANCE.PDF</a> )	>

(<http://asigroup.us>)

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# Washroom Accessories

## Restroom Accessories

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Sanitary Napkin/Tampon Vendors

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Soap Dispensers & Faucets - Designer Series

Soap Dispensers - SureFlo® Dispensing System

Soap

Dispensers



**B-4706 25** Contura™

**Recessed Napkin / Tampon Vendor, 25-Cent Operation**

Dispensers - Wall-Mounted	14 3/8" W x 28 3/8" H. Push-Button Operation, Less Than 5 Lb of Force, No Grasping, Pinching or Twisting of the Wrist. Easy access
Waste Receptacles	Product tray. Single-coin slots are key to jam-resistant operation.
View All Restroom Accessories	Accepts one or two quarters (U.S. or Canadian). Push-button coin return cancels Product.jpg selection. Returned coins or wrong coins (1¢, 5¢, 10¢) by-pass mechanism and drop into Product tray.
Toilet Compartment Accessories	Empty Product.jpg indicator automatically blocks coin slot. Easy Product loading, no weights. Holds 30 tampons, 20 napkins. Two flush tumbler door locks keyed like other Bobrick accessories.
Koala Childcare Accessories	Separately-keyed coin box lock for management access. Easy 25¢ to 50¢ field coin conversion. type 304 satin-finish stainless steel on exposed surfaces.
Special Accessories	Order part No. 3706-250 for a free vend conversion kit to satisfy free menstrual product requirements in schools.

TECHNICAL DATA SHEET

VIEW PRODUCT RESOURCES

# Accessory Options & Replacement Parts

## Accessory Options

- [3706-176 Flange Kit](#)



## Ordering Replacement Parts

Bobrick is here to help you keep your products in good working order with the right Replacement Parts for products installed in your building. We invite you to find the part you need [here](#).

## Resources

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### Literature

- [Advisory Bulletin](#)
- [Restroom Accessory Catalog](#)

### Documentation

- [Care and Maintenance](#)
- [Country of Origin](#)
- [French-Canadian TD](#)
- [Installation Instructions](#)
- [LEED Contribution](#)
- [Product Warranty](#)
- [Technical Data Sheet](#)

### Spec Downloads

- [BIM-Object](#)
- [Guide Specification](#)

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