Explanation of Changes in AB 152 (Levine)

Chapter 161, Statutes of 2004
(Effective: July 15, 2004)

Education Code – Part 30

1. **Section 56000** - The amendment is technical. Language was deleted in the last paragraph of the section regarding the Master Plan for Special Education being implemented "during a two-year transitional period commencing with fiscal year 1980-81, with full implementation to be completed by June 30, 1982."

2. **Section 56032** - The amendment clarifies the definition of "individualized education program" (IEP) by referencing Sections 56345 and 56345.1 of the Education Code and links the definition to Section 300.340 through 300.350 of Title 34 of the Code of Federal Regulations. Section 56032 was previously written only defining an IEP as meaning an "individualized family service plan" (IFSP) when it pertained to an individual with exceptional needs younger than three years of age. The amendment was necessary because the overwhelming majority of individuals with exceptional needs who have an IEP are in the age range of 3 through 21, inclusive.

3. **Section 56040** - The amendment clarifies, in a new subdivision (a), that the State has in effect a policy that ensures that all individuals with exceptional needs between the ages of 3 and 21, inclusive, have a right to a free appropriate public education (FAPE), including individuals who have been suspended or expelled from school, in accordance with paragraph (1) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 300.121 of Title 34 of the Code of Federal Regulations. A new subdivision (b) was added to the section, excluding from FAPE, an individual, aged 18 through 21, who, in the educational placement prior to their incarceration in an adult correctional facility was not actually identified as being an individual with exceptional needs, or did not have an IEP.

4. **Section 56043** - The amendment divides subdivision (d) into two paragraphs with paragraph (2) containing language conforming to paragraph (2) of subsection (b) of Section 300.343 of Title 34 of the Code of Federal Regulations, and in accordance with Section 56344, that a meeting to develop an IEP for a pupil must be conducted within 30 days of a determination that the child needs special education and related services. Subdivision (e), regarding a statement of transition service needs for individuals with exceptional needs beginning at age 14, <u>or younger</u>, if determined by the IEP team, was amended to align the language with paragraph (1) of subsection (b) of Section 300.347 of the Code of Federal Regulations. Subdivision (j), regarding the timeline when a parent or guardian requests an IEP team meeting to review an IEP, was amended deleting the language "not counting days in July and August," and inserting, <u>not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays.</u>

5. **Section 56170** - The amendment, regarding the definition of "private school children with disabilities," cites Section 300.450 of Title 34 of the Code of Federal

Regulations to clarify that the definition includes children enrolled by their parents in private schools or facilities, including private preschools. Prior to the amendment, the definition only referenced private elementary and secondary schools or facilities.

6. **Section 56195.7** - The amendment adds a new subdivision (j) to the section regarding local written agreements in a special education local plan area (SELPA) in accordance with Section 1413 of Title 20 of the United States Code. Paragraph (1) of the new subdivision requires each single-district SELPA to "have a written procedure for the ongoing review of programs conducted, and procedures utilized pursuant to Section 56205, under the local plan as defined pursuant to Section 56027 and administered pursuant to Section 56195, and a mechanism for correcting any identified problem pursuant to paragraph (6) of subdivision (c)." Paragraph (2) requires a multidistrict SELPA ,established pursuant to subdivision (b) of Section 56195.1, and a district or districts joined with the county office in accordance with subdivision (c) of Section 56195.1, to "have a written agreement entered into by entities participating in the local plan that includes a provision for ongoing review of programs conducted, and procedures utilized, under the local plan, and a mechanism for correcting any identified problem pursuant to paragraph (6) of subdivision (c)." Paragraph (3) of the subdivision says that the written procedure referenced in paragraph (1) and the written agreement referenced in paragraph (2) need not be submitted to the Superintendent of Public Instruction but shall be available upon request by the California Department of Education.

7. **Section 56301** - The amendment divides the section, pertaining to the continuous child find system, into four subdivisions. Subdivisions (a) and (c) contain language from the law as it read prior to AB 152. A new subdivision (b) of the section, requires in accordance with Section 300.125 of Title 34 of the Code of Federal Regulations, that the child find requirements "also apply to highly mobile individuals with exceptional needs, such as migrant and homeless children, and children who are suspected of being an individual with exceptional needs pursuant to Section 56026 and in need of special education, even though they are advancing from grade to grade." Subdivision (d) was added to specify that the "child find data collected pursuant to this chapter, or collected pursuant to a regulation or an interagency agreement, are subject to the confidentiality requirements of Section 300.125 and Sections 300.560 to 300.577, inclusive, of Title 34 of the Code of Federal Regulations."

8. **Section 56320** - The amendment is technical. It was made to paragraph (1) of subdivision (b), relative to tests and other assessment materials, by changing the phrase "pupil's primary language" to "pupil's native language" to align the terminology with the "native language" definition in paragraph (16) of Section 1401 of Title 20 of the United States Code and Section 300.19 of Title 34 of the Code of Federal Regulations.

9. **Section 56321** - A technical amendment was made in paragraph (2) of subdivision (b), relative to the proposed assessment plan, changing the term "primary" to "native" language in keeping with the change made in Section 56320. A new subdivision (e) was added to address the provision of paragraph (3) of

subsection (a) of Section 300.505 of Title 34 of the Code of Federal Regulations that "parental consent is not required before reviewing existing data as part of an assessment or reassessment, or before administering a test or other assessment that is administered to all children, unless before administration of that test or assessment, consent is required of the parents of all the children."

10. **Section 56341.5** - The amendment to subdivision (c) adds the federal citation, "clause (ii) of paragraph (1) of subsection (b) of Section 300.345 of Title 34 of the Code of Federal Regulations," to the provision that parents and guardians shall be informed in the IEP meeting notice of the right to bring other people to the meeting who have knowledge or special expertise regarding the individual with exceptional needs.

11. **Section 56344** - The amendment in the last sentence of subdivision (a) addresses the requirement in paragraph (2) of subsection (b) of Section 300.343 of Title 34 of the Code of Federal Regulations that a meeting to develop the initial IEP for a child must be conducted within 30 days of a determination that the child needs special education and related services.

12. **Section 56345** - The amendment in the last sentence of subdivision (c) addresses the requirement in paragraph (2) of subsection (a) of Section 300.350 of Title 34 of the Code of Federal Regulations that "public education agencies shall make a good faith effort to assist each individual with exceptional needs to achieve the goals and objectives or benchmarks listed in the individualized education program of the pupil."

13. **Section 56345.1** - The amendment, relative to the statement of transition service needs beginning at age 14, in subdivision (a), adds the language, "or younger, if determined by the individualized education program team pursuant to paragraph (1) of subsection (b) of Section 300.347 of Title 34 of the Code of Federal Regulations," to align with the federal requirement.

14. **Section 56346** - The amendment adds a new subdivision (a) to align the informed parental consent provision with federal regulations. The new subdivision (a) reads: "Informed parental consent shall be obtained before the initial provision of special education and related services to an individual with exceptional needs pursuant to clause (ii) of paragraph (1) of subsection (a) of Section 300.505 of Title 34 of the Code of Federal Regulations." The subsequent subdivisions are re-lettered.

15. **Section 56365** - The amendment to subdivision (a), regarding nonpublic, nonsectarian schools and agencies, cites Section 300.401 of Title 34 of the Code of Federal Regulations that requires the State education agency to ensure that each child that is referred, under contract, to a nonpublic, nonsectarian school by a public agency is provided special education and related services in conformance with an IEP and at no cost to the parents; is provided an education that meets State and local standards; and has all of the rights of an individual with exceptional needs who is served by a local educational agency. A technical grammar amendment was made in the last sentence of subdivision (c) changing the word "must" to "shall."

16. **Section 56381** - The amendment to subdivision (f) addresses the requirements in paragraphs (1) and (2) of subsection (c) of Section 300.505 of Title 34 of the Code of Federal Regulations that if a parent fails to respond to a request for reassessment of their child, then informed parental consent need not be obtained if the local educational agency can demonstrate that it has taken reasonable measures to obtain consent and the child's parent has failed to respond. The addition of subdivision (h) addresses paragraph (1) of subsection (c) of Section 300.534 of Title 34 of the Code of Federal Regulations that a local educational agency must assess an individual with exceptional needs in accordance with specified provisions of the Education Code and Federal regulations before determining that the individual is no longer an individual with exceptional needs.

17. **Section 56500.3** - The amendment to subdivision (e) addresses the requirement in paragraph (3) of subsection (b) of Section 300.506 of Title 34 of the Code of Federal Regulations that the State shall bear the costs of the mediation process, including the costs of meetings to encourage mediation, and specifies that the cost of mediation is included in the contract between the California Department of Education and the organization or entity conducting the mediation conferences. The amendment to subdivision (h) includes the federal citation, "paragraph (4) of subsection (b) of Section 300.506 of Title 34 of the Code of Federal Regulations," requiring that each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. The amendments to subdivisions (a), (b), (f), and (j) contained minor grammar changes.

18. **Section 56500.4** - The amendment to this section deletes the phrase, "as the case may be," to address a concern of the U.S. Department of Education regarding the requirements in Section 300.503 of Title 34 of the Code of Federal Regulations regarding the prior written notice that must be given to the parents of an individual with exceptional needs prior to specified instances. The Federal department requested that the phrase be deleted because it placed a limitation as to when the procedural safeguards notification must be provided and therefore conflicted with the requirements of Section 300.503.

19. **Section 56500.6** - This section was added to Part 30 of the Education Code to address Section 300.457 of Title 34 of the Code of Federal Regulations describing when due process hearings are applicable and inapplicable for complaints pertaining to children enrolled in private schools by their parents. Section 300.457 specifies that due process applies only to child find and evaluation (assessment) and does not apply to the private school provisions under Sections 300.452 – 300.462.

20. **Section 56502** - The amendment to subdivision (a), addresses the requirement in paragraphs (1) and (2) of subsection (c) of Section 300.507 of Title 34 of the Code of Federal Regulations regarding the procedures that require the parent of an individual with exceptional needs or the attorney representing the child, to provide notice (which must remain confidential) to the Superintendent of Public Instruction in a request for a hearing, including the contents of the notice.

21. **Section 56504.5** - The technical amendment adds the Federal citation, Section 300.508 of Title 34 of the Code of Federal Regulations, regarding impartial due process hearing officers, to this section pertaining to the California Department of Education contracting with a single, nonprofit organization or entity to conduct mediation conferences and due process hearings. The section previously only cited Section 300.506 regarding mediation.

22. **Section 56505** - The amendment in subdivision (c) addresses subsections (a) and (b) of Section 300.508 of Title 34 of the Code of Federal Regulations regarding impartial due process hearing officers, including who may not conduct a hearing. Subdivision (k) was added to address subsection (c) of Section 300.508, requiring each public agency to keep a list of persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. A technical grammar amendment was made at the beginning of subdivision (i).

23. **Section 56505.1** - The amendment to subdivision (e), regarding the right of a due process hearing officer to order an impartial assessment of the pupil, including an independent educational assessment, adds language that the cost of any assessment ordered "shall be at public expense pursuant to subsection (d) of Section 300.502 of Title 34 of the Code of Federal Regulations" and included in the contract between the California Department of Education and the organization or entity conducting the hearing.

24. **Section 56506** - The amendment to subdivision (a), regarding the written notice to the parent of his or her due process rights, like the amendment to Section 56320, changes the phrase "primary language of the parent" to align with the "native language" definition in Section 300.19 of Title 34 of the Code of Federal Regulations. The amendment to subdivision (e), regarding written parental consent before any assessment of the pupil is conducted, adds the Federal citation, "subsection (c) of Section 300.505 of Title 34 of the Code of Federal Regulations," requiring that if a public agency can demonstrate that it has reasonable measures to obtain parental consent, and the child's parent has failed to respond, then the reassessment can be obtained without parental consent.

25. **Section 56515** - The amendment adds Chapter 5.1 (commencing with Section 56515) to Part 30 of the Education Code, entitled "Confidentiality of Information About Individuals With Exceptional Needs," to address Sections 300.560 to 300.577 of Title 34 of the Code of Federal Regulations. The amendment covers the Federal requirements, including, notice to parents, access rights, records on more than one child, lists and types of locations of information, parental consent regarding the disclosure of personally identifiable information, fees for copies of records, amendment of records at parent's request, opportunity for a hearing, safeguards, destruction of information, children's privacy rights, enforcement, and disciplinary information about an individual with exceptional needs. The amendment also defines "personally identifiable."

26. **Section 56863** - The technical amendment in the second paragraph, regarding reference to surrogate parent in the definition of "parent of pupil" in the provisions governing special education programs for individuals with exceptional needs residing in state hospitals, deleted the outdated reference to Public Law 94-142.

The amendment added the Federal citation to Section 300.515, covering surrogate parents, of Title 34 of the Code of Federal Regulations.