

# THE LOCAL SCHOOL BOARD MEMBER RECALL ACT

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John F. Kennedy  
Cuddy & McCarthy, LLP

# LOCAL SCHOOL BOARD MEMBER RECALL

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- Question: Can you be removed from office as an elected school board member?
  - Answer: You bet you can!!
  - How? Stay tuned ...
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# LOCAL SCHOOL BOARD MEMBER RECALL

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Source of Power to Recall:

Article XII, Section 14, N.M. Constitution  
(Copy on CD)

Procedure for Recall:

The Local School Board Member Recall  
Act, NMSA 1978 Sections 22-7-1 to  
22-7-16

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- Section 22-7-4: “Any elected member of the local school board of any school district may be recalled as provided in the Local School Board Member Recall Act.”
- Grounds for seeking recall: Specific charges which constitute misfeasance in office, malfeasance in office or violation of the Oath of Office. See Article XII, Section 14 and Section 22-7-8C.

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- ❑ Definition of "Misfeasance":  
"The performance by an officer in his official capacity of a legal act in an improper or illegal manner," ... i.e., "a misdeed or trespass."
- ❑ Definition of "Malfeasance":  
"The doing of an official act in an unlawful manner."

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Definitions (continued):

If the Malfeasance charge relates to a discretionary act, it must have been done "with an improper or corrupt motive."

CAPS v. Board Members, 113 NM 729  
(1992).

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The Board Member's Oath of Office:

NMSA 1978 Section 22-5-9.1 and Article XX,  
Section 1, New Mexico Constitution:

Before entering upon his duties, each Board member must swear or affirm that "he will support the Constitution of the United States and the Constitution and laws of this state, and that he will faithfully and impartially discharge the duties of his office to the best of his ability."

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Under New Mexico law, recall of local school board member is for cause, not at will, and “the standards for justifying it must be sufficiently limited to avoid employing recall as a means of harassment or for purely political or personal purposes.”

CAPS V. Bd Members, 113 NM at 731

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## RECALL PROCEDURE –

Starting the Process - Step 1:

Section 22-7-8 – Completion of face sheet:

Petitioners obtain face sheet petition forms and subsequent pages from the County Clerk and provide:

- Identity of named member of the Board sought to be recalled;
- Identity of the person, group or organization seeking recall;

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## RECALL PROCEDURE –

### Starting the Process - Step 1:

Section 22-7-8 – Completion of face sheet  
(continued):

- ❑ Specify charges in support of the recall which constitute misfeasance, malfeasance or violation of oath; and
- ❑ Board members must receive copy of completed face sheets by registered mail from County Clerk.

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## RECALL PROCEDURE –

Starting the Process - Step 2:

Section 22-7-9.1 – Court hearing:

- ❑ Within 5 days of filing of the completed face sheet, County Clerk must request District Court hearing for a determination of whether sufficient facts exist to allow the recall process to continue.
- ❑ Within 10 days, District Court must hold hearing and review the petition, and affidavits setting forth specific facts in support of the charges specified on the face sheet.

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## RECALL PROCEDURE – Starting the Process - Step 2 (continued)

- ❑ Board members may appear at hearing, be represented by counsel, submit briefs and arguments against the charges, but may not submit counter petitions or affidavits.
- ❑ The allegations of the petitioners and affidavits are taken as true by the District Court.
- ❑ Because this is a summary procedure and Board members may not submit evidence in defense of the charges, the Court must not find grounds for removal of public officers “without strong proof of willful and knowing misconduct.” CAPS V. Bd Members, 113 NM at 731.

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## RECALL PROCEDURE – Starting the Process - Step 3:

- ❑ District Court determines facts not sufficient to continue recall process:
  - ❑ Petitioners may appeal to NM Supreme Court within 5 days – appeal proceeds on expedited schedule.
- ❑ District Court determines sufficient facts exist to proceed with recall process:
  - ❑ Board members may not appeal at this stage.
  - ❑ County Clerk affixes initiation date to petition and signatures may be gathered.

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## RECALL PROCEDURE – Circulating the Petition - Step 1:

- ❑ Petitioners may circulate and solicit signatures on the petitions for 110 calendar days.
- ❑ Signatures may be counted if the signatory is a registered voter of the County and school district (or of the single member electoral district of the named Board member). Must fill out entire line on petition form.
- ❑ No signatures valid prior to or more than 110 days after initiation date.

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## RECALL PROCEDURE – Circulating the Petition - Step 2:

- ❑ Petitioners must gather signatures representing 33 1/3% of the number of registered voters who voted for the school board position of the named member at the last school board election.
- ❑ Completed petitions filed with County Clerk and stamped with closure date.
- ❑ Signatures verified by Clerk within 10 working days.
- ❑ Within 5 working days of the validating of signatures, the Clerk shall determine if sufficient number to call election.

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## RECALL PROCEDURE –

Petitions Verified or Not Verified:

- ❑ Either way, County Clerk notifies Petitioners and named Board members by registered mail within 3 work days.
- ❑ If verified, Clerk initiates special recall election.

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## RECALL PROCEDURE – Petitions Verified or Not Verified (Continued):

Appeal of Clerk's Determination: Either party may challenge:

- Must be filed with District Court within 10 days of Clerk's decision.
- Appeal limited to:
  - Validity of signatures
  - Sufficiency of decision as to number of signatures, and
  - The sufficiency of the changes for recall

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## RECALL PROCEDURE –

### District Court Review - Round 2:

- ❑ District Court hears and decides challenge within 10 days. Appeal to NM Supreme Court must be filed within 5 days of District Court decision.
- ❑ If Court rejects challenge, special election held pursuant to Section 22-7-13.

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## RECALL PROCEDURE – Special Elections:

- Held within 90 days of clerk's determination as to the sufficiency of the completed petitions.
- Question for voters – whether or not the named member should be recalled.
- School District bears the costs of the special recall election.

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## RECALL PROCEDURE – Special Elections (Continued):

- ❑ If recall succeeds, vacancy filled as provided in Section 22-5-9. (Recalled member barred from appointment for remainder of term of office for which he was elected.)

# QUESTIONS???

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## Contact

John F. Kennedy  
Cuddy & McCarthy, LLP  
P.O. Box 4160

Santa Fe, NM 87502

Tel: 505-988-4476; or 866-679-4476

[jkennedy@cuddymccarthy.com](mailto:jkennedy@cuddymccarthy.com)