



# New Jersey School Boards Association

## UNIFORM RECALL ELECTION LAW FREQUENTLY ASKED QUESTIONS

The FAQ is to provide information to board members who are seeking information about a recall under the Uniform Recall Election Law (“hereafter Recall Act”).

The Recall Act’s recall procedures are summarized below in a question and answer format so the recall mechanism can be more easily understood. The FAQ is broken up into several sections: A. The Recall Process; B. The Recall Petition; C. The Recall Election.

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**Nothing contained in this document should be construed as legal advice. This document is for informational purposes only. Please consult your board attorney for legal advice.**

## **A. THE RECALL PROCESS**

### **1. When was the Recall Act enacted?**

The Recall Act was adopted on May 17, 1995 as L. 1995 c. 105 (codified at [N.J.S.A. 19:27A-1](#) et seq.). The Recall Act implements the 1993 constitutional amendment ([Article I paragraph 2](#)) granting to the voters the power to recall any elected official, including school board members. Prior to the enactment of the Recall Act, the right to recall elected officials was only available in certain municipalities and counties. [The Recall Act](#) repealed all previous recall laws.

### **2. Have many school board members been recalled under the Recall Act?**

Since the law adoption of the Recall Act in 1995, there have been only a few elections to recall school board members. In 1996, there was an attempt to recall a member of the Ramapo-Indian Hills School District in Bergen County for discussing "regionalization," but the board member retained his seat. In Salem County, the president of the Woodstown-Pilesgrove School Board was recalled in 2003 after the board refused to discuss the firing of a guidance supervisor who was popular and effective but lacked proper state credentials. (NJSBA policy calls for protection against recall when a board is legally performing its duties--*e.g.*, not discussing personnel issues in open session. See [File Code 9114](#)).

The low number of recalls may be greatly attributable to the large number of signatures required for the petition, as well as other stringent requirements such as the strict time frames that must be met at various stages of the recall effort and the fact that a recall election may not take place within the first year of an elected official's term, nor later than six months prior to the school board election in the final year of an official's term. A court decision from the Spring Lake Heights school district in 1997 illustrates how strictly courts will adhere to time frames. In that matter, a recall petition was dismissed because, given all of the statutory time periods, the election could not be held within the permitted window of time, and the law did not provide for relaxation of those restrictions. The recall election could not be held at the next general school board election, which would have been less than six months before the regular election at the end of the board member's term, because a recall election official had to wait at least 55 days following the fifth business day following the service of the certification on the board member. *Committee to Recall Casagrande v. Casagrande, Spring Lake Heights*, 304 *N.J. Super.* 496(L. Div. 1997), affirmed [304 N.J. Super. 421 \(App. Div. 1997\)](#).

### **3. Who can be recalled?**

Only officials who are elected by the voters may be recalled. For example, if you are a school board member in a Type I (appointed) district, you cannot be recalled through a recall election.

However, the law specifically permits the recall of persons appointed to fill a vacancy in an elected office. *N.J.S.A. 19:27A-4(a)*. Thus members of Type II districts who were appointed to fill vacancies are subject to recall even though they were not elected by public vote.

### **4. Can a board member be recalled in the beginning of the board member's term?**

No. A recall election may only be held after one year of service in the official's current term of office, allowing a board member to "get up to speed" before a recall can take place. This applies both to officials who were elected, as well as to officials who were appointed to fill a vacancy in an elected office.

An elected official must be given time to learn the office, become familiar with the issues, and perform duties before a recall can occur. "The recall process is not to be used as a second general election, but as a process to redress public officials who have not performed to the satisfaction of the electorate given a reasonable opportunity to do so." *Committee to Recall Casagrande v. Casagrande, Spring Lake Heights*, 304 *N.J. Super.* 496 at 510 (L. Div. 1997).

### **5. Can a board member be recalled near the end of the board member's term?**

No. A recall election may not be held in the six months prior to the school board election in the final year of the board member's term. *N.J.S.A. 19:27A-4(a)*. The effect of this provision is to reduce the potential use of the recall mechanism as a campaign tactic. It also indicates the Legislature's intent that hard-earned tax dollars should not be utilized to hold an additional election when in less than six months the public will have its opportunity to speak. *Committee to Recall Casagrande v. Casagrande, Spring Lake Heights*, 304 *N.J. Super.* 496 at 510-511 (L. Div. 1997). NJSBA is aware of at least one potential recall that did not occur due to the fact that by the time signatures were collected and approved, there were less than six months left in the board member's term.

## **6. When can a recall effort be started against a board member?**

The recall procedures may begin no earlier than the 50<sup>th</sup> day preceding the completion of the first year of the official's term of office, or the 50<sup>th</sup> day preceding the completion of the first year of service if the board member is filling a vacancy. *N.J.S.A. 19:27A-4(b)*.

## **7. How is the recall process started?**

The first step of the recall process is for the proponents of the effort, referred to in the law as the "sponsors," to establish a "recall committee" and file a "notice of intention" with the appropriate "recall election official." *N.J.S.A. 19:27A-3, 6*.

A "recall committee" is a committee formed by persons sponsoring the recall of an elected official which represents the sponsors and signers of a recall in matters relating to the recall effort.

A "recall election official" is defined by the statute as "the official authorized by law to receive nominating petitions for an elective office..." Since the board secretary is the official legally authorized to receive nominating petitions in a school board election, the board secretary serves as the "recall election official" in a recall election of a school board member. See [N.J.S.A. 19:60-7](#). (In *Casagrande*, above, the court ruled that under the particular circumstances presented, the good faith mistaken filing of the notice of intention and the petition with the borough clerk rather than with the interim board secretary did not prevent the election from going forward; however the election was voided on other grounds.)

## **8. What information must the "notice of intention" contain?**

The notice of intention filed by the recall committee must contain specific information including:

- a. name and office of the elected official sought to be recalled;
- b. name and business or residence address of at least three sponsors of the petition who shall constitute a recall committee to represent the sponsors and the signers;
- c. name of the recall committee as follows: "COMMITTEE TO RECALL [name of board member sought to be recalled] FROM THE OFFICE OF [name of office];
- d. certified statement by each member of the recall committee that he/she is registered to vote in that district, supports the recall and accepts the responsibilities of serving on the recall committee; and
- e. statement as to whether the recall election will be held at the next general or school election, as appropriate, or at a special election. [N.J.S.A. 19:27A-6](#).

## **9. Is a board member who is subject to a recall effort entitled to a statement of the reasons for the recall?**

No. It is up to the recall committee, whether it wishes to provide the reasons. The recall committee may, but is not required to, provide in the notice of intention a statement of up to 200 words indicating the reasons for the recall. The sponsors of the recall effort are not required to submit a statement of reasons in connection with the preparation or circulation of a recall petition, with the transmittal of any required notice, with the submission to voters of the question of recall, or at any other point. [N.J.S.A. 19:27A-4\(a\)](#) and [N.J.S.A. 19:27A-6\(e\)](#).

A recall effort cannot be challenged on the grounds that the reasons for the recall are arbitrary or unreasonable. Even if at some stage the reasons are presented, the Recall Act does not provide a basis on which to present a legal challenge to the sufficiency of the reasons. As a political question, rather than a judicial question, it will be up to the electorate, and not the courts, to decide whether the reasons stated are serious enough to warrant removal. However, an official subject to recall may have separate legal recourse should the statement of reasons meet the legal standard for defamation.

## **10. What happens if the “notice of intention” does not contain the required information?**

The board secretary must review the notice of intention to ensure that it complies with the information requirements. If the board secretary finds that the notice of intention does not comply, the board secretary must, within three business days, return the notice to the recall committee, together with a written statement indicating the reasons for that finding. The recall committee may file a corrected notice of intention. [N.J.S.A. 19:27A-7\(a\)](#).

The law is silent about whether the board member must be notified of the recall effort, if the notice of intention is *not* approved and the recall committee does not file a corrected notice of intention.

## **11. What happens next when the “notice of intention” contains the required information?**

*Approval:* If the board secretary finds that the notice of intention complies with the information requirements, the board secretary must imprint on the notice of intention: his/her approval, title, signature, and the date. If the recall committee has requested that the recall election be held at a special election, the board secretary must also prepare and a cost estimate for conducting the recall election, which must be added to the notice of intention, and also to the first page of each section of the recall petition. [N.J.S.A. 19:27A-7\(a\)](#). Within three business days of receiving the notice of intention, the board secretary must return a certified copy of the approved notice of intention to the recall committee.

In *Casagrande* (see above), the failure to include a cost estimate for a special election, where the petition was out of time for the regular election, rendered the petition void. The court noted that the Recall Act requires that the public must be informed that by signing the recall petition for a special election they will be spending school board monies for elections, not books. The court had no power to alter this clear and unambiguous mandate.

## **12. Can the recall committee voluntarily pay for the costs of a recall election?**

No. In *Casagrande* (see above), the court ruled that the recall committee could not be permitted to bear the cost of the recall election, although the committee wanted to pay for it to avoid starting the process over again when its petition was deemed void for its failure to include a cost estimate. The court found that only the school board may fund the election by law.

## **13. How long must the approved “notice of intention” be retained?**

The board secretary must keep the original approved notice for not less than five years from the date of approval, and make it available to the public for inspection and copying. The board secretary must also keep the affidavit of the time and manner of service and proof of publication for so long as the approved notice of intention is retained. [N.J.S.A. 19:27A-7.](#)

## **14. When does the board member get served with a copy of the “notice of intention?”**

Within five business days of approving the notice of intention, the board secretary must serve a copy of it on the school board member, by personal delivery or certified mail. [N.J.S.A. 19:27A-7\(b\).](#)

## **15. Must the “notice of intention” be published in the newspaper?**

Yes. Within two weeks of approving the notice of intention, the board secretary must have it printed in newspaper published in the “jurisdiction.” [N.J.S.A. 19:27A-7\(b\).](#) “Jurisdiction” is defined as “the electoral jurisdiction... within which the voters reside who are qualified to vote for an elected official who is sought to be recalled,” which would in the case of the recall of a school board member, be the appropriate school district(s). [N.J.S.A. 19:27A-3.](#)

If no such paper exists, publication must be made in a newspaper generally circulated within the district. The published notice of intention must be abbreviated to include

information naming only three members of the recall committee who must be designated for that purpose by the committee.

After publication, the board secretary must attach to the original approved notice of intention, an affidavit of service and proof of publication. The affidavit of service and proof of publication must be retained on file with the notice of intention for not less than five years, and make it available to the public for inspection and copying. [N.J.S.A. 19:27A-7.](#)

## **16. How may a board member respond if served with a “notice of intention?”**

If the notice of intention does not contain a statement of the reasons for the recall, the board member may not file an answer. The right to file an answer with the board secretary is limited only to those recall efforts where the notice of intention contains a statement of the reasons for the recall. Where the notice of intention lists the reasons for the recall, a board member may file an answer not to exceed 200 words, with the board secretary. The board member’s answer will provide information to the voters and must be printed on the first page of each section of the petition. [N.J.S.A. 19:27A-7\(c\).](#)

Where the notice of intention contains no statement of reasons for the recall, or where a board member chooses not to file an answer, the board member must instead “acknowledge receipt” of the notice of intention in writing to the board secretary.

Within two business days of the board member’s filing or acknowledgement, the board secretary must serve a copy of same on the recall committee. If the board member filed no answer or acknowledgement within the five business days allotted, then the board secretary must transmit to the recall committee a signed statement that no such response was timely filed with it. These communications must be by personal delivery or certified mail. [N.J.S.A. 19:27A-7\(c\).](#)

## **17. If the “notice of intention” contains no statement of reasons, how can a board member publicly defend him/herself?**

While the formal recall procedure does not permit a board member to include an answer as part of the recall mechanism in such a case, nothing in the law would preclude the board member from submitting editorials, writing letters to the editor, or otherwise defending the board member’s position. The School Ethics Commission has ruled that letters to the editor do not violate the School Ethics Act as long as the board member indicates that the letter is not authorized by, nor written on behalf of, the board; the information is accurate and not confidential; and the letter does not compromise the board. See, Advisory Opinion [A03-07.](#)

Also, the law provides specifically that an elected official may accept contributions and make expenditures for the purpose of opposing a recall effort by establishing a “recall defense committee.” [N.J.S.A. 19:27A-17\(b\)](#).

## **18. Is a “recall defense committee” subject to New Jersey’s campaign contribution laws?**

Yes. See, [N.J.S.A. 19:27A-17](#). A recall defense committee is subject to all of the requirements on the receipt of contributions applicable to any candidate committee under the “New Jersey Campaign Contributions and Expenditures Reporting Act,” contained in [N.J.S.A. 19:44A-1 et seq.](#) See also, regulations under [N.J.A.C. 19:25-14.1 et seq.](#) (Likewise, the recall committee is subject to reporting requirements, with certain modifications. See #52 below.)

A recall defense committee is in addition to any candidate committee or joint candidates committee which the official may otherwise establish. The Recall Act states that a recall defense committee will be permitted to receive, without limit, contributions from that candidate committee or joint candidates committee. It also addresses the effect of transfers between these funds.

The recall defense committee may be formed any time after and may not accept contributions until the board member is served with notice of the recall effort in either of these ways:

- the recall committee serves written notice of the recall effort on the board member by personal service or certified mail, with a copy filed with the school board secretary or
- a copy of an approved notice of intention is served on the board member.

All contributions received by the recall defense committee may only be used for:

1. the payment of campaign expenses incurred in the course of and directly related to the committee’s effort to oppose the recall or the passage of the question of recall at the recall election,
2. the payment of overhead and administrative expenses related to the operation of the committee, or
3. the pro-rata repayment of contributors.

The ELEC may require a recall defense committee to file cumulative reports. Board members should contact the [Election Law Enforcement Commission](#) (ELEC) at (609) 292-8700 for more information regarding their reporting obligations.

## **19. What steps must the “recall committee” take to initiate the calling of the recall election?**

The recall committee must prepare and circulate a “recall petition.” The recall committee must have the petition signed by least 25% of the persons registered to vote within the district on the date of the last general election that took place before the sponsors of the petition filed a notice of intention. The “recall petition” demands that an election be held to decide whether the official should be recalled. [N.J.S.A. 19:27A-5](#). The recall petition must follow a very specific format. [N.J.S.A. 19:27A-8](#). More information about the required contents, format and procedures involved with the recall petition, are described in **Section B**. of this document.

## **20. Does the board secretary review the “recall petition” to make sure it is valid?**

All sections of a completed recall petition must be filed with the recall election official at the same time. Within 10 business days of being presented with the completed petition for filing, the board secretary must determine whether the petition is signed by a sufficient number of registered voters and whether the petition meets all the requirements of the law. [N.J.S.A. 19:27A-11](#).

## **21. What happens if the “recall petition” is deficient?**

If the recall petition does not comply with the detailed requirements set forth in the statute, it will be void. The Recall Act specifically states that the petition will be void if it is not timely filed, if it bears an insufficient number of signatures, if any signature of a recall committee member is not affixed to it or is deemed invalid, or upon resignation of the board member. Furthermore, no part of a void petition may be used in connection with any other recall effort. If the board secretary believes that the petition is insufficient, the official will issue a determination that the petition is void. [N.J.S.A. 19:27A-10\(b\)](#), [N.J.S.A. 19:27A-11](#).

## **22. How can I challenge the board secretary’s “determination of sufficiency?”**

If the board secretary determines that the recall petition is sufficient, the board member who is the subject of the recall may challenge that determination by filing a written objection to the board secretary’s determination on the sufficiency of the petition. That objection must be filed within 10 business days from issuance of the board secretary’s determination. Similarly, the recall committee may file a written objection if the board secretary determines that the recall petition is insufficient. [N.J.S.A. 19:27A-12](#).

Therefore, a board member who is the subject of a recall petition should obtain a copy of the petition to make sure that it complies with all of the legal requirements. Upon request of either the board member or the recall committee, the board secretary must provide the party with a certified copy of the recall petition and must allow examination of the original recall petition during business hours. Then, in “an expedited manner” the board secretary must pass upon the validity of the objection.

**23. Can a board member appeal if the board secretary renders a negative determination on the validity of the board member’s objection?**

The board secretary’s decision on the objection may be contested within 10 business days by filing an action in Superior Court. The Court must hear the matter “on an expedited basis” and issue an order as soon as possible. Whenever the recall petition requires more than 1,000 names, the parties are permitted to introduce evidence of random standard statistical analysis to create a rebuttable presumption regarding the sufficiency of the number of signatures. [N.J.S.A. 19:27A-12](#).

**24. Will the board of education pay for the court costs incurred by the board member in contesting the recall?**

NJSBA attorneys are unaware of any judicial or administrative interpretation of the board member indemnification statute, [N.J.S.A. 18A:12-20](#), that would provide the answer to this question. NJSBA policy File Code 9114 asserts NJSBA’s belief that board members should be indemnified in recall matters that do not involve allegations of a criminal or quasi-criminal conviction as the basis for the recall. However, legal arguments can be made either way based on the language of *N.J.S.A. 18A:12-20*.

The board member indemnification statute requires that a board of education pay the counsel fees, expenses and the costs of appeal and other financial losses resulting from a “civil, administrative, criminal or quasi-criminal action or other legal proceeding” brought against a board member for an act or omission arising out of and in the course of the performance of his duties as a member of a board of education.

A board member who contests a recall and seeks counsel fees from the board could argue that the recall election is a “legal proceeding” brought against him/her for acts or omissions arising from his/her duties. However, that stance could be challenged on several grounds. First, if the notice of intention fails to identify a reason for the recall, the board member may not be able to demonstrate that the recall was in fact brought in response to the board member’s “acts or omissions.” (NJSBA policy, File Code 9114, states NJSBA’s belief that the law should require that the recall petition state the basis for the recall.) Second, there is some question as to whether an election is a legal proceeding “brought against a board member” as contemplated by the statute; an argument could be advanced that a public body should not be required to bear the expense incurred by one of

its members in contesting the implementation of a statutory election mechanism for which the board must also bear the expense.

Boards of education should seek the advice of the board attorney on the question of indemnification in the event of recall.

## **25. If the “recall petition” is determined ultimately to be valid, can the board member prevent a recall election by resigning?**

The election must be held unless the board member resigns within five business days of service of the “certificate of sufficiency” on him/her. If the board member has not resigned from board office at any point prior to five business days of the service of the certificate of sufficiency, the board secretary must order and fix the holding of the recall election on the date indicated in the certificate. [N.J.S.A. 19:27A-13\(a\)\(1\)](#).

## **26. What is the “certificate of sufficiency?”**

The “certificate of sufficiency” is the document issued by the board secretary when the board secretary finds that the “recall petition” meets the statutory requirements. If the board member does not challenge the board secretary’s finding that the recall petition is sufficient, the board secretary must “forthwith” issue a “certificate of sufficiency” of the petition to the recall committee. Such a “certificate of sufficiency” must likewise be issued if the official does challenge the board secretary’s determination but the original determination is confirmed by the board secretary or the Court. The board secretary must serve a copy of the “certificate of sufficiency” on the board member by personal service or certified mail. [N.J.S.A. 19:27A-13\(a\)\(1\)](#).

## **27. What information must the “certificate of sufficiency” contain?**

It must contain:

1. name and office of the board member sought to be recalled;
2. number of signatures required to cause the recall election;
3. statement that a valid recall petition with the required number of signatures has been filed with the board secretary and that a recall election will be held; and
4. date and time the election will be held if the board member does not resign.

[N.J.S.A. 19:27A-13\(b\)](#).

## **B. THE RECALL PETITION**

### **28. Who prepares the “recall petition?”**

The petition is prepared by the recall committee in accordance with a format which has been approved by the Secretary of State. Prior to its use, the sections shall be reviewed by the school board secretary for compliance with the statute. The board secretary must review it within three business days of its receipt, and must print on the first page of each section his/her approval and signature. No section of the petition may be used to solicit signatures unless the board secretary has approved the petition and signed his/her approval. [N.J.S.A. 19:27A-8\(f\)](#).

### **29. Who circulates the “recall petition?”**

No person may act as the “circulator” (defined as one, paid or unpaid, who solicits signatures for a petition) unless he or she is a registered voter in the jurisdiction from which the official sought to be removed was elected. [N.J.S.A. 19:27A-9](#).

### **30. How many signatures are required?**

The recall committee must have the petition signed by least 25% of the persons registered to vote within the district on the date of the last general election that took place before the sponsors of the petition filed a notice of intention. [N.J.S.A. 19:27A-5](#).

When the circulator obtains signatures, no obstruction may be placed over any portion of a page of a petition section when the page is presented to a voter for signature. [N.J.S.A. 19:27A-8\(g\)](#). (The Recall Act is silent as to whether this would render the petition void.)

### **31. Will the absence of the signature of a “recall committee” member render the “recall petition” invalid?**

Yes. Every member of the recall committee and every circulator must sign the petition. If any recall committee member fails to sign, or if the committee member’s signature is deemed invalid, the petition will be void. [N.J.S.A. 19:27A-8\(h\)](#) (The Recall Act is silent as to whether the petition is void for the absence or invalidation of a circulator’s signature.)

In other cases where a person signs his/her name to a page bearing the name of a county in which he/she is not registered to vote, the signature will be invalid, but this will not affect the validity of the section, page, or other signatures. [N.J.S.A. 19:27A-8\(e\)](#)

**32. May signatures appearing in letters of support for the recall election be counted among the signatures required to demand a recall election?**

No. The law states that no signature appearing on any document other than a “recall petition” prepared in accordance with the statutory requirements may be counted among the signatures required on a “recall petition” to determine whether a recall election shall be held. [N.J.S.A. 19:27A-8\(a\)](#).

**33. Are there criminal penalties if an ineligible person signs the petition?**

The Recall Act makes it a crime of the fourth degree for a person who knows he/she is ineligible to sign a petition, to sign the petition. It is also a fourth degree crime to pay or offer someone to vote or to refrain from voting in a recall election. [N.J.S.A. 19:27A-8\(j\)](#). These crimes may actually constitute third degree crimes under the enhanced penalties set forth in 2005 amendments to the general election law. [N.J.S.A. 19:34-25](#).

**34. Can the same “recall petition” demand an election to recall several elected officials?**

No. A recall petition may not demand an election to recall more than one elected official. [N.J.S.A. 19:27A-5](#). Further, no recall committee may sponsor the recall of more than one officeholder and, if a recall effort fails at the ballot, neither the sponsoring recall committee nor its members may again sponsor, nor may the committee again finance, an effort to recall the board member during the same term of office which the failed recall effort was attempted. [N.J.S.A. 19:27A-6\(b\)](#).

**35. What is the format for a “recall petition?”**

A petition may consist of any number of separate sections which must be identical in most respects, except as to the information entered by the signers and circulators. The recall committee determines the size of the paper used and the number of pages in each section. The back and front of a piece of paper will constitute a page and signatures may be affixed to each such page.

Each page of each section must be numbered and must include, printed in bold letters in at least 10-point type, the heading “PETITION FOR THE RECALL OF [name of board member sought to be recalled] FROM THE OFFICE OF [name of office]. [N.J.S.A. 19:27A-8](#).

### **36. What information must the “recall petition” contain?**

The first page of each section must state, in type of not less than 8-point, the information contained in the notice of intention (except that information on only three members of the recall committee need be listed) including:

- any cost estimate prepared
- statement of the reasons for the recall, if one was provided, or a declaration that no such statement of reasons was provided
- a copy of the answer provided by the official sought to be recalled, if one was provided, or a declaration that no such answer was provided. However, the official’s answer or declarations may not be included if a statement of the reasons for the recall was not provided in the notice of intention. [N.J.S.A. 19:27A-8\(c\)](#)

Each page of the petition must be arranged so that each signer personally signs his or her signature, name and residence address including street and number or a designation of residence which is adequate to readily determine location, municipality, and the date of verifying signatures. A box must be provided after each name for the signer to indicate that the signer has had the opportunity to review the information on the first page of that section of the petition. [N.J.S.A. 19:27A-8\(d\)](#).

Each completed page of any section of a recall petition filed with the board secretary must include at the bottom the circulator’s affidavit stating (1) the printed name of the circulator (2) the address of the circulator (3) a statement that the circulator assumed responsibility for circulating that section and witnessed the signing of each signatory, and that to the circulator’s best belief the signers are legal residents of the State and county in which the section was circulated, and the section was circulated “in absolute good faith” to cause the recall (4) the dates between which all the signatures to that page were collected; and (5) the circulator’s signed statement as to the truth and correctness of the above information. [N.J.S.A. 19:27A-9\(b\)](#).

### **37. May signatures be solicited through paid advertisements or mailings?**

Yes. Paid print advertisements and mailings are permitted, and circulators may be paid for soliciting signatures. In such cases, the solicitation or petition must disclose prominently, in a statement printed in at least 10-point type:

- the identity of the person paying for the printed or personal solicitation; and
- that the circular is paid. [N.J.A.C. 19:27A-8\(i\)](#).

The ELEC was required to promulgate regulations to implement these provisions and has done so. See, [N.J.A.C. 19:25-14.14](#).

*Criminal sanctions.* While signatures may be solicited through paid advertisements, it is a crime to pay a voter for his or her vote. The Recall Act states that it is fourth degree crime to pay or offer to pay someone to sign or to refrain from signing a recall petition, or to pay or offer to pay someone to vote or to refrain from voting in a recall election. These crimes may constitute third degree crimes of bribery under the enhanced penalties set forth in 2005 amendments to the general election law. [N.J.S.A. 19:34-25.](#)

**38. When and where is the “recall petition” filed once the signatures are collected?**

The completed petition is filed with the board secretary. All sections must be filed at the same time. The petition must be filed within 160 days from the date on which the recall petition receives final approval for circulation from the board secretary. [N.J.S.A.19: 27A-10\(a\)](#)

**39. May the election go forward if the “recall petition” is not filed in time?**

No. If it is not filed within this time period, the position will be void, and no part of a void petition may be used in connection with any other recall effort. [N.J.S.A.19: 27A-10\(b\)](#)

**40. What if the board member resigns before the “recall petition” is filed?**

The collection of signatures must cease and the petition will be void. [N.J.S.A.19: 27A-10\(c\)](#)

***C. THE RECALL ELECTION***

**41. When may the recall election be held?**

The recall election for a school board member must be held at either the next general election or the next regular school election occurring at least 55 days following the fifth business day after service of the certification, unless it was indicated in the notice of intention that the recall election would be held at a special election.

If the notice of intention indicated that it would be held at a special election, the board secretary must order and fix the date, which must be the next Tuesday occurring during

the period beginning with the 55<sup>th</sup> day and ending on the 61<sup>st</sup> day following the fifth business day after service of the certification of the petition. If, however, that Tuesday falls on or during the 28-day period before or after any general, primary, nonpartisan, school district or other recall election within any part of the jurisdiction, then the special election will be held on the first Tuesday after that, which does not fall within that 28-day period. No special election for recall may be scheduled on the same day as a primary election. [N.J.S.A. 19:27A-13](#).

It is unclear how election officials will reconcile the scheduling requirements for special elections under the Recall Act, with the specific permitted dates for special school elections under [N.J.S.A. 19:60-2](#), a separate statute adopted in 2001 that specifically limits the holding of school elections to four designated dates:

*The board of education of a type II district may call a special election of the legal voters of the district on only the **fourth Tuesday in January** other than in a year when a presidential primary election occurs, in which case no such election on that date may be called, the **second Tuesday in March**, the **last Tuesday in September**, or the **second Tuesday in December** when in its judgment the interests of the schools require such an election. The board of education shall give the municipal clerk or clerks, as the case may be, and the county board of elections no less than 60 days' notice, in writing, of its intention to hold a special election.*

**42. If as a result of the recall election the board member resigns prior to the expiration of the five-day period following service of the “certificate of sufficiency” upon him/her, how does the board fill the vacancy thereby created?**

The Recall Act states that such a vacancy is to be filled in the manner provided by law for filling vacancies in that office. Thus, in school districts, vacancies must be filled according to the statutory provisions of [N.J.S.A. 18A:12-15](#).

**43. What information regarding the election must be published?**

Notice of the recall election, including all the information contained in the certificate of sufficiency, must be printed in a newspaper which is published in the school district. If there is none, then it must be printed in a newspaper generally circulated in the district.

If the election takes place at a school election, publication is to be made by the officer designated by law to be responsible for publishing notice of any other election to be held in the jurisdiction on the same day as the recall election. For school elections, the county board of elections would publish the notice of the recall election. [N.J.S.A. 19:12-7](#). The election is published on the same schedule as the notice of the school board election.

If the recall election takes place at a general election, the board secretary transmits the certificate to the officer responsible for publishing notice of that election. If it takes place

at a special election, the board secretary must transmit a copy of the certificate to the county board of elections who must have the notice of election printed once during the 30 days preceding the day fixed for the closing of the registration books for the recall election and once during the calendar week preceding the week in which the recall election is held. [N.J.S.A. 19:27A-13\(c\)](#).

#### **44. Is the recall election of a school board member conducted the same way as a school election?**

Yes, the provisions of [N.J.S.A. 19:60 -1 et seq](#), and Title 18A will govern the conduct of the recall election so long as those provisions are not inconsistent with any provision of the Recall Act. [N.J.S.A.19:27A-14](#).

#### **45. What information must the ballot contain?**

The ballot must pose the following questions to the voter: "Shall [name of board member] be recalled from the office of [insert office]?" The words "Yes" and "No" appear to the right of the question. No statement of reasons appears on the ballot. Only the sample ballot, and not the actual ballot, must contain the statement of reasons for the recall and the answer as appeared on the recall petition.

Also, if a successor is to be chosen at the recall election in the event the recall is successful, the ballot must indicate: "Nominees for successor to [name and title of the board member recalled] in the event he (or she) is recalled" followed immediately by the names of all persons nominated as successors. [N.J.S.A. 19:27A-15](#).

#### **46. How many votes are required to recall an official?**

The statute requires an affirmative vote of a majority of those voting on the question of recall. [N.J.S.A. 19:27A-16](#)

#### **47. If the recall is successful, how does the board fill the vacancy thereby created?**

The vacancy is filled by election. The law states that candidates to succeed the elected official in nonpartisan units of government must be nominated by petition. [N.J.S.A. 19:27A-15\(b\)](#) The Recall Act states that whenever a successor is to be chosen at a recall election in the event the recall is successful, the ballot shall indicate: "Nominees for successor to (insert name and title of the elected official sought to be recalled) in the event he (or she) is recalled." The names of all persons nominated as successors shall appear afterwards to allow each voter to vote for one." [N.J.S.A. 19:27A-15\(d\)](#). Nominees to succeed the recalled board member are to be treated as candidates for the purpose of campaign contributions.

Note that [N.J.S.A. 18A:12-15](#) sets forth the procedures for filling vacancies that may be created, for example, by the absence of candidates for election to the school board or where two or more candidates receive an equal number of votes. Since the Recall Act does not specifically address these situations, the existing school laws will probably govern. Thus, if there are no candidates to succeed a board member who is recalled, the county superintendent would fill the vacancy. Should there be a tie vote, the vacancy would be filled by special election.

**48. When does the term of the recalled board member officially terminate, and when does the successor succeed to that office?**

If the majority of votes cast on the recall question are in the affirmative, the board member's term terminates upon the certification of the election results. Where nominees to succeed the board member are voted on at the same election, the successor receiving the greatest number of votes shall succeed to the office of the recalled official upon certification of the election results and shall serve for the remainder of the unexpired term. [N.J.S.A. 18A:12-16](#).

Presumably, the certification of election results occurs the Monday after the election as it does with other elections. [N.J.S.A. 19:19-1](#).

**49. If an elected official is recalled, may that same official be elected as his or her own successor?**

Yes, the law specifically states that an elected official who is the subject of a recall election shall be eligible to be elected as that official's own successor in the event that the election results in the official's recall. [N.J.S.A. 19:27A-15\(b\)](#).

**50. If the recall effort is not successful, does the board member continue in the office as if no recall election had been held?**

Yes. If a majority of votes cast on the question of recall of an elected official are in the negative, the official shall continue in office as if no recall election had been held and the vote for the successor will be void. [N.J.S.A. 19:27A-16](#).

**51. Can a board member who survives a recall challenge be recalled again in the same elected term?**

The Recall Act states that an elected official whose office survives a recall election may not again be subject to recall until after having served one year of a term calculated from the date of the recall election. [N.J.S.A. 19:27A-16\(c\)](#).

## 52. Is a “recall committee” subject to New Jersey’s campaign contributions laws?

Yes. A recall committee (like a recall defense committee, #18 above) will be treated as a candidate committee for the purposes of “The New Jersey Campaign Contributions and Expenditures Reporting Act,” [N.J.S.A. 19:44A-1 et seq.](#), with certain specific exceptions. One exception is that the use of contributions received by the recall committee is limited to the following:

- the payment of campaign expenses incurred in the course of and directly related to the committee’s effort to promote the recall or the passage of the question of recall at the recall election;
- the payment of overhead and administrative expenses related to the operation of the committee; or
- the pro-rata repayment of contributors.

The recall committee may not accept contributions until after the official is served with notice of the recall effort in either of these ways:

- the recall committee serves written notice of the recall effort on the board member by personal service or certified mail, with a copy filed with the school board secretary (in which case the recall committee must file a notice of intention within 30 days of the date it serves notice on the official; otherwise, the recall committee must stop its solicitation, acceptance and expenditure of funds); or
- a copy of an approved notice of intention is served on the board member by the board secretary.

At the time of its initial filing with ELEC, the recall committee must file in addition to its depository account registration information, a registration statement including detailed information specifically set forth in the Recall Act, as well as other information that may be required in regulation by ELEC designed to disclosed the economic, political and other particular interests and objectives which the committee advances.

The ELEC may require a recall committee to file cumulative reports. [N.J.S.A. 19:27A-17.](#)