



## RECALL OF SCHOOL BOARD DIRECTORS

Elected officials in Colorado are subject to being recalled after the first six months and prior to the last six months in office. Recall is an extremely effective tool given to electors to express their displeasure with their elected officials. However, the process can cause divisions in a community that take years to heal.

The procedures for recall are found in the Uniform Election Code of 1992 at C.R.S. § 1-12-101 *et seq.* When school districts were brought under this code, the specific school recall procedures were repealed. This memo is for informational purposes only and does not constitute legal advice. Please consult with the district's or board's legal counsel as specific questions arise.

### Recall Petition

The recall process begins with the circulation of a petition demanding the election of an unspecified successor to the elected official named in the petition. The petition also contains a general statement of 200 words or less stating the grounds for the recall.<sup>1</sup>

The petition must be signed by at least 40% of those electors who voted in the last preceding election at which the director to be recalled was elected. If no such election was held (e.g., the director was appointed to the position), the petition shall be signed by at least 10% of the electors residing in the school district on the date that the form of the petition is approved by the county clerk. In no case may the number of signatures be less than 10% of the eligible electors qualified to vote in the most recent biennial school election, but no more than 15,000 signatures will be required.<sup>2</sup>

It is up to the recall committee, not the school district, to prepare the recall petition in accordance with the specific requirements set forth in state law. The petition is filed with the county clerk and recorder in which the school district's administrative offices are located. The county clerk and recorder is responsible for verifying the petition and conducting the recall election.<sup>3</sup>

### Petition Sufficiency and Protest

During the review of any recall petition, the county clerk and recorder must notify the recall committee of any errors and insufficiencies regarding circulator affidavits. Upon receipt of such notification, the recall committee has 5 calendar days from the date of receipt of the notice to cure the errors and insufficiencies described in the notice. To cure a circulator affidavit, the recall committee must provide the county clerk and recorder with a new circulator affidavit that corrects the errors of the previously submitted affidavit.<sup>4</sup>

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<sup>1</sup> C.R.S. § 1-12-103.

<sup>2</sup> C.R.S. § 1-12-105. Once a school director is subject to one recall election, any future recall petitions during that term must contain 1½ times the number of signatures required on the first petition. C.R.S. § 1-12-102(3).

<sup>3</sup> C.R.S. § 1-12-107(3).

<sup>4</sup> C.R.S. § 1-12-108(8)(c)(II.5).



When a petition is deemed insufficient, the county clerk and recorder will provide the specific reasons for the determination to the recall committee. The recall committee may appeal the determination of insufficiency in the manner proscribed by law to the district court in the county where the petition was filed.<sup>5</sup>

When a petition is deemed sufficient, the county clerk and recorder will notify both the recall committee and the incumbent of the determination of sufficiency.<sup>6</sup> Any eligible elector then has 15 days to file a protest, in writing under oath, with the county clerk and recorder.<sup>7</sup> Any signer may request that his or her name be stricken from the petition within this protest period.<sup>8</sup> Grounds to protest a petition include failure of any portion of a petition or circulator affidavit to meet the requirements of law or any conduct on the part of petition circulators that substantially misleads persons signing the petition.<sup>9</sup> A hearing on the protest will follow 5-10 days after the county clerk and recorder has sent notice of the protest to the recall committee.<sup>10</sup>

## Timing of Election

The recall election will be held not less than 30 nor more than 60 days after the petition is determined to be sufficient. However, if a general election is scheduled within 90 days, the recall election is held as part of the general election.<sup>11</sup> The election for a successor is conducted at the same time as the recall election.<sup>12</sup>

If a nonpartisan recall election is to be conducted by mail ballot, the county clerk and recorder will submit a written election plan to the Secretary of State (SOS) as required by law no later than 5 calendar days after calling the election.<sup>13</sup> The SOS will approve or disapprove a recall election plan within 5 calendar days after receiving the plan and will provide written notice to the county clerk and recorder.<sup>14</sup>

## Candidates

Nomination petitions for candidates appearing on the ballot and affidavits of intent to run as a write-in candidate may be circulated 15 days after the date that the recall petition is found to be sufficient and must be filed no later than 15 days before the date set for the election.<sup>15</sup> Every nomination petition must contain the same number of signatures required if the candidate was running in the regular biennial school election.<sup>16</sup>

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<sup>5</sup> C.R.S. § 1-12-108(8)(c)(III).

<sup>6</sup> C.R.S. § 1-12-108(8)(c)(I).

<sup>7</sup> C.R.S. § 1-12-108(9)(a)(I).

<sup>8</sup> C.R.S. § 1-12-108(9)(d)(I).

<sup>9</sup> C.R.S. § 1-12-108(9)(a)(II).

<sup>10</sup> *Id.*

<sup>11</sup> C.R.S. § 1-12-111.

<sup>12</sup> C.R.S. § 1-12-118(1).

<sup>13</sup> C.R.S. § 1-12-111.5(1).

<sup>14</sup> C.R.S. § 1-12-111.5(2).

<sup>15</sup> C.R.S. §§ 1-12-115; 1-12-117(2).

<sup>16</sup> C.R.S. § 1-12-117(3)(a).



All candidates must meet the usual qualifications required of school board candidates:

1. a resident of the school district and a registered voter, as shown on the books of the county clerk and recorder, for at least 12 consecutive months prior to the election;
2. 18 years or older by the date of the election;
3. a citizen of the United States; and
4. a resident of the director district in which he or she is a candidate if the school district has a director district plan of representation or a combined director district and at-large plan of representation.
5. not have been convicted of a of a sexual offense against a child

Within 72 hours after certification results of a recall election, any elector who is registered in a political subdivision represented by an official subject to recall may file a protest in the district court alleging that the successor candidate who received the highest number of votes fails to qualify for office.<sup>17</sup> If the district court determines that the successor candidate does not qualify for the office, the recalled school board director is not eligible as a candidate to fill the vacancy.<sup>18</sup>

## Ballot Questions

Essentially two questions are presented to the electors at the recall election. First, whether the incumbent school board member should be recalled. If the majority of voters vote “no,” the incumbent board member continues in office. If the recall is successful, the second question is who will succeed the recalled board member and be elected from among the candidates for the position. No vote is counted for a successor candidate unless the voter also voted for or against recall.<sup>19</sup>

The ballot must include a statement of 200 words or less stating the grounds for recall (this may be the same statement to appear on the petition for recall, *see above*). The officer sought to be recalled may also submit a statement of justification of his or her course of conduct, which statement must be 300 words or less.<sup>20</sup>

## Election Expenses

If the incumbent is not recalled, the school board is required by law to authorize a resolution to repay the incumbent for authorized expenses incurred because of the recall.<sup>21</sup> These expenses can include money spent challenging the sufficiency of the petition, as well as campaign expenses.<sup>22</sup> The amount repaid cannot exceed 40 cents per eligible elector, subject to a maximum payment of \$10,000.<sup>23</sup>

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<sup>17</sup> C.R.S. § 1-12-118.5(1)(a).

<sup>18</sup> C.R.S. § 1-12-118.5(2).

<sup>19</sup> Colo. Const. art. XXI, § 4.

<sup>20</sup> C.R.S. § 1-12-112.

<sup>21</sup> C.R.S. § 1-12-120(2).

<sup>22</sup> C.R.S. § 1-12-120(3).

<sup>23</sup> C.R.S. § 1-12-120(2).



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Specific questions should be referred to the school district's legal counsel.*

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