



Nicole P. v. DCFS Frequently Asked Questions

1. How was I identified as a person who should receive the Notice?

If you have received a copy of the *Nicole P.* Notice in the mail from DCFS, it is because you belong to a group of individuals that is affected by the settlement. The following groups were mailed notice of the settlement:

- Those class members who had been identified by DCFS as “child care workers” as that term is used by DCFS.
- Those class members who consented to a DCFS background check and whose background check results showed an Allegation #74 finding on the State Central Register (a database containing names of individuals who have been indicated by DCFS).
- Those who were investigated or indicated for Allegation #74 (and not for any other allegations in the same investigation) between August 28, 2015 and May 9, 2017.

2. What if I did not receive the mailed Notice from DCFS? Could I still be entitled to Special Review?

Possibly. Even if you were not directly mailed the Notice, you may still be entitled to have your Allegation #74 finding reviewed if you fit certain criteria. If you were investigated or indicated under Allegation #74 from February 24, 2012 until May 9, 2017, you are a class member and are entitled to Special Review and may submit the Questionnaire.

3. What is “Allegation #74 Inadequate Supervision?”

In its administrative Rules, DCFS has a system that categorizes allegations of child abuse or neglect into a variety of numbered “Allegations.” Allegation #74 applies to alleged child neglect in the form of “inadequate supervision.” Prior to May 9, 2017, the DCFS Rule on Allegation #74 stated that a parent or caretaker could be indicated as a child neglecter any time “a child is placed in a situation or circumstances that are likely to require judgment or actions greater than the child’s level of maturity...”

On May 9, 2017, however, DCFS issued a new rule on Inadequate Supervision. The new rule states that inadequate supervision “occurs when a child is placed at a real, significant and imminent risk of likely harm due to a parent’s or caregiver’s blatant disregard of parental or caregiver responsibilities of care and support, including supervision.”

4. Why am I receiving the Notice now?

On September 28, 2016, the class action lawsuit of *Nicole P. v. DCFS* was filed in Illinois state court in Cook County. The case number is 16-CH-12809. The lawsuit challenged DCFS’s use of Allegation #74, arguing that the Allegation was legally void, and sought to stop DCFS from relying



ASCEND JUSTICE

on Allegation #74 to investigate or indicate individuals. After this lawsuit was filed, DCFS revised the definition of Allegation #74 to more accurately reflect the agency's policy of allowing parents to make prudent and reasonable parenting decisions for their children. The revised Allegation #74 Rule became effective on May 5, 2017, and DCFS staff were notified of this change on May 9, 2017.

You may have received the Notice now because the parties in *Nicole P. v. DCFS* have reached a settlement. Under the settlement, class members may have their findings of Allegation #74 Inadequate Supervision reviewed by a Special Reviewer, who will apply the revised Allegation #74 Rule to the circumstances of their indicated finding. This Special Review may lead to your Allegation #74 finding being expunged.

5. Why don't people who were indicated before February 24, 2012 get any benefit from this settlement?

An indicated finding for Allegation #74 remains on the State Central Register for 5 years. Because the class of individuals in *Nicole P. v. DCFS* was certified by the Court on February 24, 2017, individuals who were indicated for Allegation #74 before February 24, 2012 were not included in the class because their indicated findings for Allegation #74 would have already been removed from the State Central Register.

6. What if I was investigated during the time frame of February 24, 2012 through May 9, 2017, but the indicated finding against me was made after May 9, 2017?

You are entitled to Special Review and may submit the Questionnaire. The Special Review process is available to anyone who was investigated or indicated in the time frame of February 24, 2012 through May 9, 2017, even if the indicated finding date was after May 9, 2017.

7. Why don't people who were investigated after May 9, 2017 get a Special Review under this settlement?

The revised Allegation #74 went into effect on May 5, 2017, and DCFS staff were notified of the change on May 9, 2017. Therefore, for those individuals who were investigated or indicated after May 9, 2017, DCFS was legally required to apply the revised Allegation #74 Rule.

8. Why isn't DCFS reviewing indicated findings other than Allegation #74 that were investigated or indicated in the time frame of February 24, 2012 through May 9, 2017?

Other allegations and indicated findings were not at issue in the *Nicole P. v. DCFS* case. If DCFS indicated you for allegations in addition to or other than Allegation #74, those allegations are not eligible for review under the Special Review process.



ASCEND JUSTICE

9. If I am a class member, how do I obtain a Special Review of my Allegation #74 indicated finding?

You MUST fill out the Questionnaire found on our website and submit it by mail to DCFS at this address:

Attn: Nicole P. Special Review
c/o D. Frevert
DCFS Division of Child Protection
4500 S. 6th Street Rd.
Springfield, IL 62703

Special Review of your indicated finding is **not** automatic. Rather, you must submit the Questionnaire within the applicable time frame to receive a Special Review. The deadline for submission of your Questionnaire depends on how you were notified of this settlement. The table below explains the deadlines for submission of your Questionnaire.

<u>Type of Notice</u>	<u>Deadline by which your Submitted Questionnaire must be Postmarked</u>
If you received an “Individualized Notice of Available Relief” from DCFS in the mail:	120 days after the “Individualized Notice of Available Relief” you received from DCFS was postmarked.
If you received a “Notice of Available Relief” from DCFS in the mail following a DCFS background check, but did not receive an “Individualized Notice of Available Relief”:	60 days after the “Notice of Available Relief” from DCFS was postmarked.
If you did not receive any Notice from DCFS in the mail:	October 23, 2018; or June 4, 2019, if submitted with the approval of Class Counsel in writing. (The Family Defense Center and the law firm Jones Day are Class Counsel.)

10. What if I did not receive any Notice in the mail and therefore have missed the October 23, 2018 deadline for submission of my Questionnaire? Is there any way for me to obtain Special Review?



ASCEND JUSTICE

Possibly. If you did not receive Notice in the mail and missed the October 23, 2018 deadline, you may still request Special Review, but only with the approval of Class Counsel. In order to obtain the approval of Class Counsel, you MUST email your request to Allegation74Class@familydefensecenter.net.

If Class Counsel approves your request, you have until June 4, 2019 to submit your Questionnaire along with the written approval of class counsel.

11. What if I was investigated or indicated for Allegation #74 between February 24, 2012 and May 9, 2017, but the investigation was unfounded or my indication was expunged? Do I need to take any further action to ensure that the investigation remains unfounded or the indication remains expunged?

No. If you no longer have an indicated finding for Allegation #74 listed in the State Central Register, you do not need to take any further action under the settlement. This settlement does not affect indicated findings that have already been unfounded or expunged.

12. Who is the Special Reviewer?

The Special Reviewer is a neutral third party, agreed upon by both parties in this case, who will be temporarily employed by DCFS for the purpose of the Special Review process.

If any timely requests for a Special Review are received after the Special Reviewer's employment period with DCFS has ended, the Special Review shall be conducted by a Department of Children & Family Services employee who is agreed upon by counsel for both parties.

13. Can I request a copy of my DCFS investigative file?

Yes, if you are a member of the class. If you would like to receive a copy of your DCFS investigative file, you must request a copy by marking the appropriate box on your Questionnaire. A copy of your investigative file will be sent to you via email within approximately 45 days of your request. If you do not have an email address or do not list one on your Questionnaire, the investigative file will be sent via regular mail to the address listed on your Questionnaire.

14. Can I submit any additional relevant documents to DCFS in addition to my Questionnaire?

Yes. There are two opportunities to do so. First, you may attach to your Questionnaire any relevant documents or information that you would like DCFS to review.

Second, if you requested a copy of your investigative file when you submitted the Questionnaire, you may submit any additional relevant documents or information to DCFS within 45 days of the date DCFS transmits the file via email. That information should be sent to the same address listed for submission of your Questionnaire.



15. What will happen during the Special Review?

The Special Reviewer will consider your Questionnaire, the DCFS investigative file, and any other relevant documents and information that you have submitted. The Special Reviewer will apply the new Allegation #74 Rule that went into effect on May 9, 2017, the current version of the Allegation #74 Procedures, and the Special Review procedures agreed upon by the parties. All of that information can be found [[here](#) and [here](#)]. Then, the Special Reviewer will determine whether your indication should be affirmed or expunged. The Special Review process is a written one; you will not be present during the Special Review and will not present any testimony in connection with it.

16. How and when will I be notified of the Special Reviewer’s decision in my case?

You will be mailed the decision within 45 days of the Special Reviewer’s decision. Please note that due to volume, we do not know when the Special Reviewer will issue a decision on your Special Review.

17. Can I appeal the Special Reviewer’s decision?

No, there is no appeal of the Special Reviewer’s decision.

18. I requested a Special Review but the finding against me was affirmed. If I still have a pending DCFS administrative hearing or administrative review action in Illinois circuit court regarding my Allegation #74 indicated finding, can I still continue to appeal the indicated finding in those venues?

Yes. The Special Review process is separate from and does not replace any administrative process or hearing conducted by the DCFS Administrative Hearings Unit and will not result in a “final administrative decision” within the meaning of the Administrative Review Law (735 ILCS 5/3-101). If you are a class member and you have not yet exhausted your right to an administrative expungement appeal hearing in the DCFS Administrative Hearings Unit or an administrative review action in Illinois circuit court, you maintain the right to continue to pursue that action, regardless of whether your finding underwent the Special Review process. Please refer to Appendix J of the Settlement found on our website for additional information

19. I previously had or continue to have a case in juvenile court, so how does this affect my juvenile court case? Does it mean that my children will be returned to me if they are placed outside of my home and/or that my juvenile court case will be closed?

The settlement in *Nicole P.* affects only DCFS’s administrative indicated findings of neglect due to alleged “Inadequate Supervision” and has NO impact on any juvenile court proceedings or any findings previously entered in a juvenile court case. DCFS’s Reporting Act determinations are done under an entirely different law than the set of laws that govern juvenile court proceedings. By statute, juvenile courts do have the authority to enter adjudicatory findings of neglect, and make



ASCEND JUSTICE

child custody determinations, based upon the presence of inadequate supervision. Therefore, even if DCFS is removing the administrative “indicated” finding of “Allegation #74 Inadequate Supervision” associated with your name on the State Central Register, this administrative action will not require an Illinois circuit court to reverse its own adjudications of neglect and will not, by itself, require an Illinois circuit court to restore custody of your children to you. We recommend, however, that if you have a pending juvenile court case, that you speak to your own counsel about whether the removal of the indicated finding against you by DCFS, pursuant to the Special Review, should be brought to the attention of the juvenile court in your specific case.

20. What if I am an attorney representing a client who is affected by the *Nicole P.* settlement, and I have questions about potential strategies or legal issues related to my client’s case?

If you are an attorney and you would like to further discuss the potential impact of the *Nicole P.* settlement, you may send an email to Allegation74Class@familydefensecenter.net. In any email you send, please identify your question as concerning “*Nicole P.* Litigation” and also identify yourself as an attorney.

21. What can I do if I still have questions about the *Nicole P.* Notice and/or I would like the Family Defense Center to consider providing assistance in my specific case?

If you still have questions about how the *Nicole P.* settlement might impact you, you should contact us at Allegation74Class@familydefensecenter.net. Please note that we may only be able to provide you simple advice or information. We would greatly appreciate your reviewing the information in the FAQ carefully before you email us, and if you have specific questions, we will do our best to answer to evaluate your request and provide guidance where possible. Please be aware that thousands of individuals are affected by this settlement, and that we are receiving many other inquiries, so our ability to respond quickly to you or to provide assistance specific to your case may be limited by our available resources.