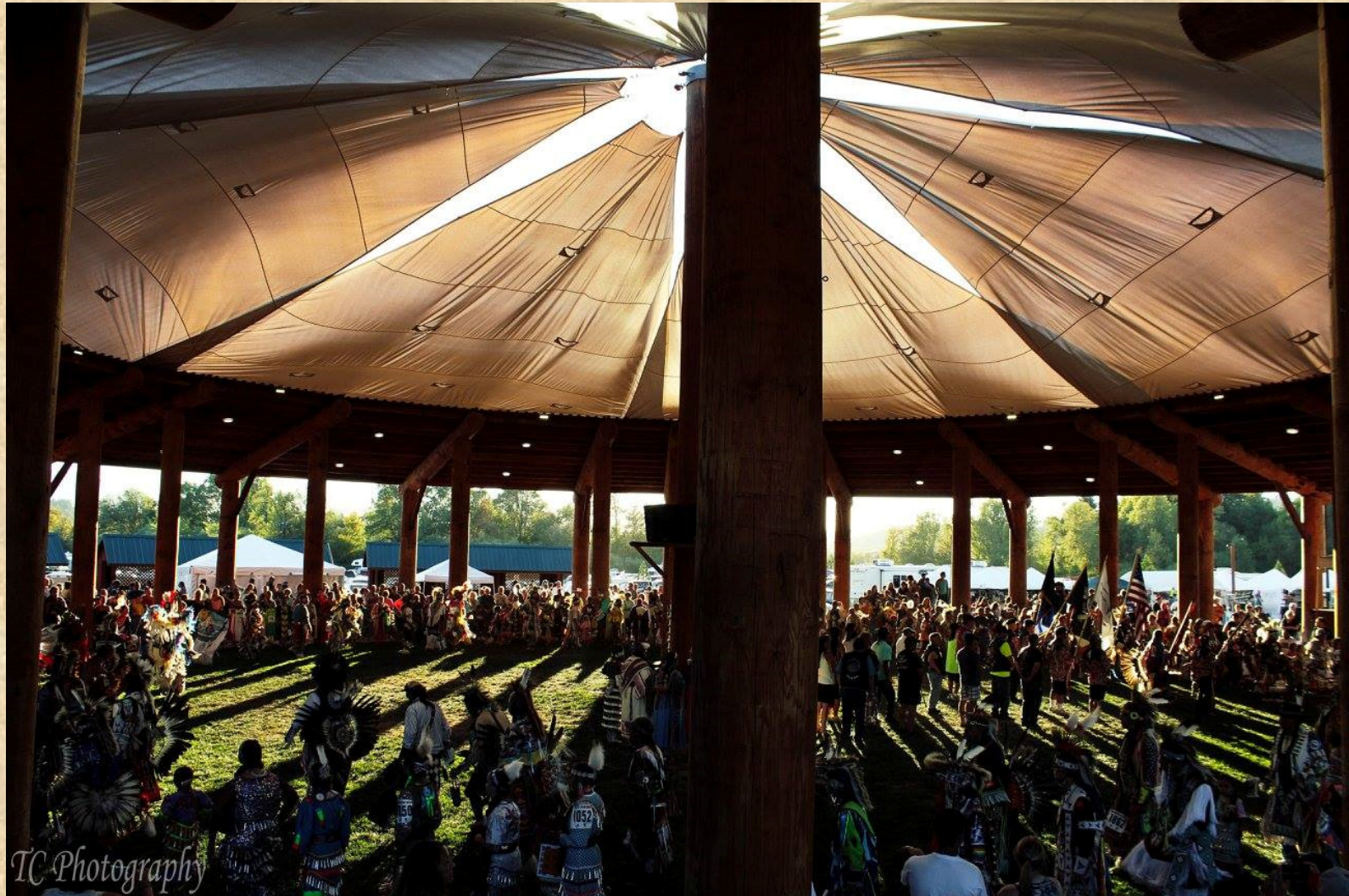


NO PARTY LIKE AN ICWA PARTY

National CASA/GAL Webinar
March 17, 2020



What is different about advocating for an Indian Child?



INDIAN CHILD WELFARE ACT

What is it and why does it exist?



Federal Indian Policy

- CONFEDERATION PERIOD 1774-1789
- TRADE & INTERCOURSE ERA 1789-1825
- REMOVAL ERA 1825-1850
- RESERVATION ERA 1850-1887
- ALLOTMENT AND ASSIMILATION ERA
1887-1934
- INDIAN REORGANIZATION ERA 1934-1940
- TERMINATION ERA 1940-1961
- SELF-DETERMINATION ERA 1961-
CURRENT.

Indian Child Welfare Act Video



INDIAN CHILD WELFARE ACT

➤ Federal Law passed in 1978.

25 USC 1901-1963

➤ Purpose of Act is to establish minimum Federal standards (both procedural and substantive) for State child custody proceedings involving an “Indian child”



INDIAN CHILD WELFARE ACT

❖ Congress found:

- U.S. has a direct interest, in protecting Indian children who are members of or eligible for membership.
- Indian children were being removed from homes at higher rates than non-Indian children
- Indian children being placed in non-Indian homes
- Cultural biases & ignorance of Native cultural and social standards were the cause
- Negative effects on children, families, Tribes.

- Law applies to states not Tribes.
- Law is based on political status
not race.



INDIAN CHILD WELFARE ACT REGULATIONS

- ❖ Why did BIA pursue this rule? Why now?
 - Disproportionality Rates
 - Inconsistent Implementation by States
- ❖ Effective December 12, 2016



HIGHLIGHTS OF ICWA/NEW RULE

- ❖ Applicability of ICWA
- ❖ Jurisdiction and Transfers
- ❖ Placement Preferences



Applicability

- ❖ Type of proceeding
 - emergency and child custody-proceedings (foster-care placement, TPR, Pre-adoptive placement, adoptive placement)
- ❖ Is child an “Indian Child”
 - child must be a member of a federally recognized Tribe, or eligible for membership with a federally recognized Tribe and has bio parent who is member

Applicability

- ❖ In identifying whether the child is an “Indian child,” court may not look at these factors:
 - Participation of the parents or the Indian child in cultural, social, religious, or political activities;
 - Relationship between the Indian child and his or her parents;
 - Whether the parent ever had custody of the child, or
 - The Indian child’s blood quantum.

Applicability

- ❖ Rule **requires court to ask** whether the child is an “Indian child” in each and every child custody proceeding.
 - Must ask each participant in the proceeding whether they know or have reason to know the child is an Indian child.
- ❖ List of factors indicating a “**reason to know**”
 - Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child
 - The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaskan Native Village
 - The child is, or has been, a ward of Tribal court
 - Either parent or the child possesses an ID indicating Tribal membership.

Applicability

❖ If there is a “reason to know,” the court must:

- Confirm, on the record, the agency or other party used due diligence to identify and work with all of the Tribes of which there is reason to know the child may be a member or eligible for membership.
- Treat the child as an Indian child, unless and until it is determined on the record that the child is not an “Indian child”

Jurisdiction & Transfer

- ❖ Jurisdiction: Tribe has exclusive jurisdiction if the child is domiciled or residing on reservation or child is ward of Tribal court
- ❖ Transferring to Tribal Court:
 - Parent/custodian or Tribe may request at any stage of the proceeding. Request may be in writing or orally on the record.

Jurisdiction & Transfer

❖ Transferring to Tribal court:

➤ State court must transfer unless:

- Either parent objects;
- The Tribal court declines the transfer; or
- Good cause exists for denying the transfer

** In determining Good Cause, a Court must **not** consider, stage of case if Tribe/parent/custodian did not receive notice of proceeding until advanced stage; whether transfer could affect placement; child's cultural connections with Tribe or reservation; or socioeconomic conditions or any negative perception of Tribal or BIA social services or judicial systems.

Placement Preferences

- ❖ ICWA Placement preferences apply in the placement of an Indian child when placed out of home.
 - If Indian child's Tribe has established by resolution, a different order of preference than ICWA, the Tribe's placement preferences apply.
 - Court **must** apply placement preferences unless determination of good cause exists.

Placement Preferences

❖ Good Cause to Depart from Placement Preferences should be based on one or more of the following:

- Request of one or both parents
- Request of child if sufficient age and capacity
- Presence of sibling attachment
- Extraordinary physical, mental, or emotional needs
- Unavailability of suitable preferred placement

Placement Preferences

- ❖ Foster care & Pre-adoptive
 - Extended family
 - Home licensed, approved, or specified by Tribe
 - Indian foster home licensed or approved by authorized non-Indian licensing authority; or
 - Institution for children approved by an Indian Tribe or operated by an Indian organization
- ❖ Adoptions
 - Extended family
 - Other members of Tribe; or
 - Other Indian families

RESOURCES

- ❖ www.bia.gov, click on the “Indian Child Welfare Act” icon in right-hand margin
 - Training material
 - Copies of handouts
 - The final rule
- ❖ www.nicwa.org

What is the role of CASA/GAL volunteers in the state's compliance with ICWA?



➤ INVESTIGATION

- Ask, Ask, Ask

➤ ADVOCACY

- Cultural well-being of child



➤ FACILITATION

- Cultivate a connection with Child's Tribe

➤ MONITORING

- Is child attending events?
- Are placement preferences being followed?

A young girl with blonde hair is captured in a joyful dance pose on a lush green field. She is wearing a vibrant orange long-sleeved top and a matching skirt with a white fringe detail. A wide, shimmering silver belt cinches her waist. She holds a large, flowing cape that is white on the inside and orange on the outside, with long, colorful fringe (red, white, and blue) trailing behind her. She is also wearing white leg warmers and yellow moccasins. The background is a soft-focus view of a grassy area with white chairs, suggesting an outdoor event.

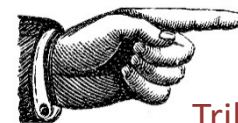
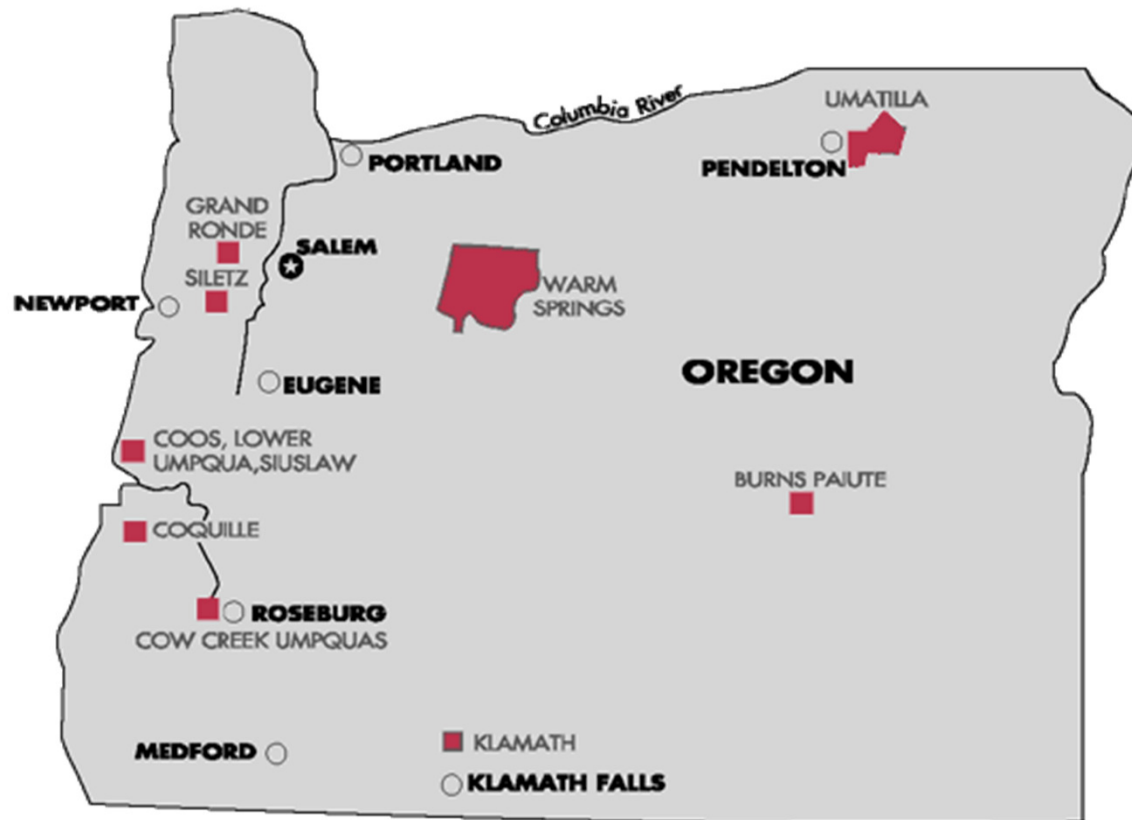
Supporting Native Children

A Guide for CASA/GAL Advocacy in OREGON State Courts

**Confederated Tribes of Grand Ronde Veterans
Powwow**

Oregon Tribes

Tribal Nations have existed in Oregon since time immemorial. While several Tribes signed treaties with the U.S. in the 1850s, these agreements were later violated when the federal government “terminated” 62 Tribes and bands in Oregon—ending their status as sovereigns and assuming control of their lands. Because some Tribes were spared and others fought for restoration, there are currently nine federally recognized Tribes (many of which are confederations of multiple Tribes) in the state.



To learn more about Oregon Tribes, visit their websites, or better yet, their communities—particularly for public events such as powwows and treaty or restoration celebrations. Also try to visit their cultural centers, institutes, and libraries. Consult Additional Resources & Information (p. 23) for a directory of Tribal resources and organizations throughout the state of Oregon.

Investigation

Questions to ask

- When you are appointed to a child, **ask if the child is of Native heritage**. Make sure a final determination has been made. Continue to ask until a definitive answer is given.
- If the child is of Native heritage, **ask if the child is enrolled or eligible for enrollment in a Federally recognized Tribe**. Continue to ask state agencies to make a determination about the child's enrollment status. Remember ICWA does not apply unless the child is enrolled or eligible for enrollment.
- If the child is enrolled or eligible for enrollment, consistently **ask if the requirements of the Indian Child Welfare Act are being followed**. Ask if the child is eligible for Tribal services through the Tribe or other Federal Indian Services such as Indian Health Services or Tribal educational services.
- **Ask if potential foster placements will support the cultural well-being of the child.**
- If in care, **ask if the child feels connected to their Tribal community** (i.e. Does the child receive monthly updates/newsletters from their Tribe? Do they participate in powwows, sweats, round dances, canoe journeys, etc.? Do they spend time with their extended Native family?)



Advocacy

Advocating for the best interests of the child in the community and the court

In the Community

- **This type of advocacy may seem uncomfortable compared to other CASA volunteer work but remember CASA volunteer work is about pushing limits and opening doors for CASA children.**
- **If the child has lived outside of the Tribal community for most of their life, you will need to play a more active role in building their connections to culture, customs, and history.**
- **Locate Tribal or local Native persons to serve as mentors to the child creating another set of eyes on the child.**
- **In non-Tribal communities, advocate for the child's expression of cultural values .**

Advocacy

In court, do not be shy in calling attention to failures to engage a foster child in the life of their Tribal Nation. When a child is young, there may seem to be little value in attending powwows and cultural events, but...

There is no time but the present to root a child in their culture.

In your recommendations to the court, advocate for increased connections where there is a need. For example, request:

- Transportation to cultural events be coordinated by the caseworker
- Reevaluation of the delivery of culturally competent services
- Bi-monthly respite care with Tribal elders and mentors
- Enrollment in a course offered by the Tribe (i.e. language learning, beadwork, traditional foods, dancing, drumming)
- Receipt of Tribal newsletters, event calendars, program bulletins, etc.

Speak up for the child's needs!

Even when the child lives far away from their Tribal community, there is no excuse for neglecting their cultural identity and well-being. Make recommendations to connect the child with local and national organizations that represent Tribal interests and/or host traditional events (i.e. NDN Spark, Native American Youth Alliance).

As a CASA volunteer, you are an advocate for the child's rights as a Tribal citizen.



Image: Kwakwaka'wakw Eagle Staff

Facilitation

Facilitating the delivery of services ordered by the court for the child

Going beyond the investigation of resources for the child and the recommendation of their use, CASA volunteers act as mediators among the parties engaged in service delivery.

“Never assume that lawyers, caseworkers, and other child welfare service providers are aware of ICWA requirements. Educate those working on the child’s case as much as possible.”

(Austin, 2009, p. 7)

If the child is not enrolled with their Tribe, remind the case-worker and lawyer of the benefits of Tribal citizenship—re: health care, education, housing—and seek to secure them.

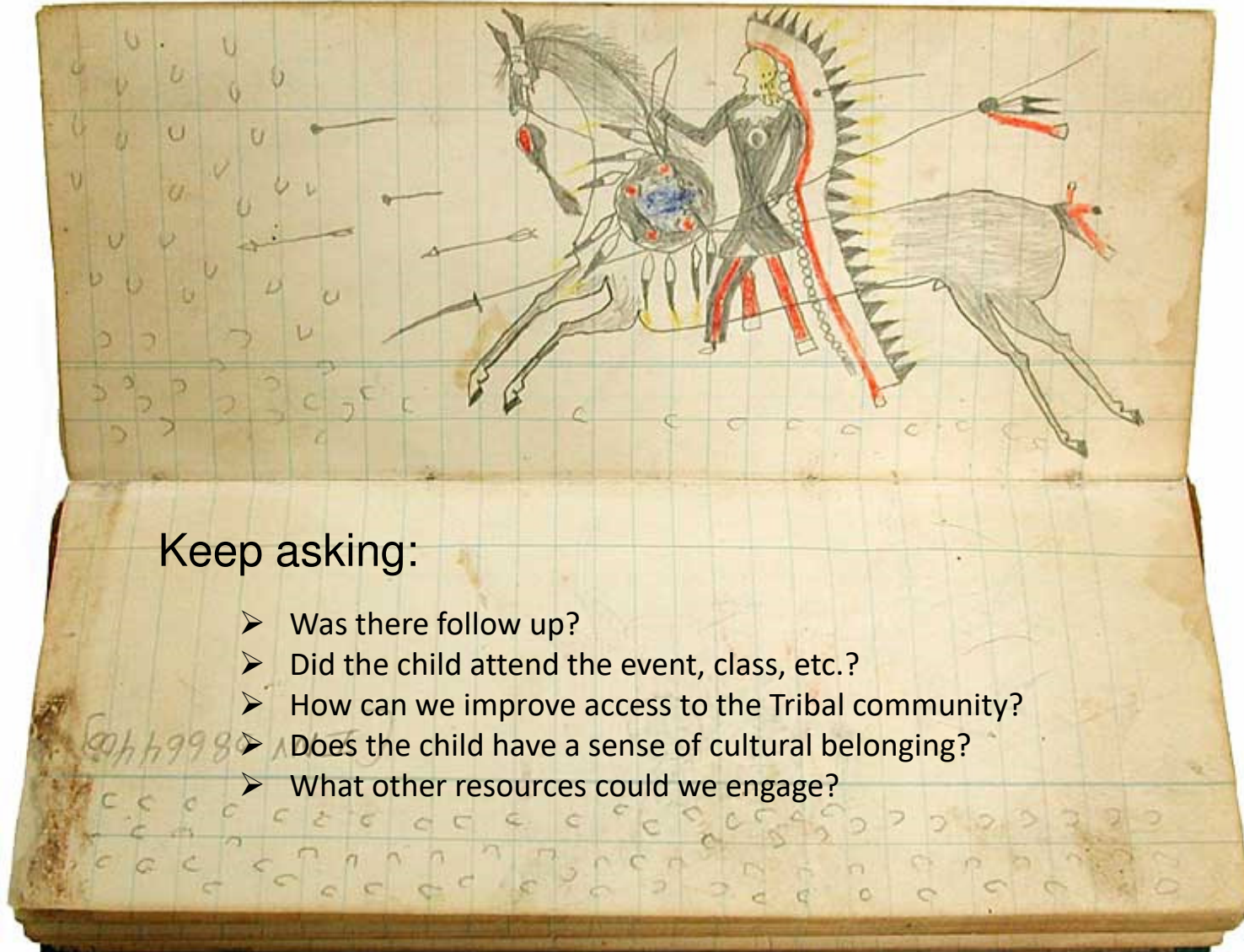
Facilitating services for the child will be much easier when you build trust with the Tribal community. To do this, remember you serve the Tribal Nation’s interests by serving the best interest of the child.



Image: Boys at the Pine Ridge (S.D.) Reservation/Aaron Huey

Monitoring

Monitoring compliance with orders of the court



Keep asking:

- Was there follow up?
- Did the child attend the event, class, etc.?
- How can we improve access to the Tribal community?
- Does the child have a sense of cultural belonging?
- What other resources could we engage?

Image: Plains Indian ledger art / National Museum of Natural History (Inv. 08664400)

Native CASA Child Worksheet

1. Name of CASA/GAL Child's Tribal Nation(s):
2. Location of Reservation(s):
3. Pieces of Tribal history (Significant historical dates):
4. Current Leaders of Tribal government:
5. Tribal Resources (e.g. child welfare, cultural connections, education):

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“WE SHALL REMAIN”

<https://www.youtube.com/watch?v=G50iwY6YjSk>

WE SHALL REMAIN was created to address the effects of historical trauma in our tribal communities. Many times, these untended wounds are at the core of much of the self-inflicted pain experienced in Native America. Much like fire, this pain can either be devastatingly destructive or wisely harnessed to become fuel that helps us to rise up and move forward in life with joy, purpose and dignity.

Created by The StyleHorse Collective. Funding provided by the Idaho Department of Juvenile Corrections and the Idaho Millennium Fund.