

# Preventing Communicable Disease through Vaccination Laws

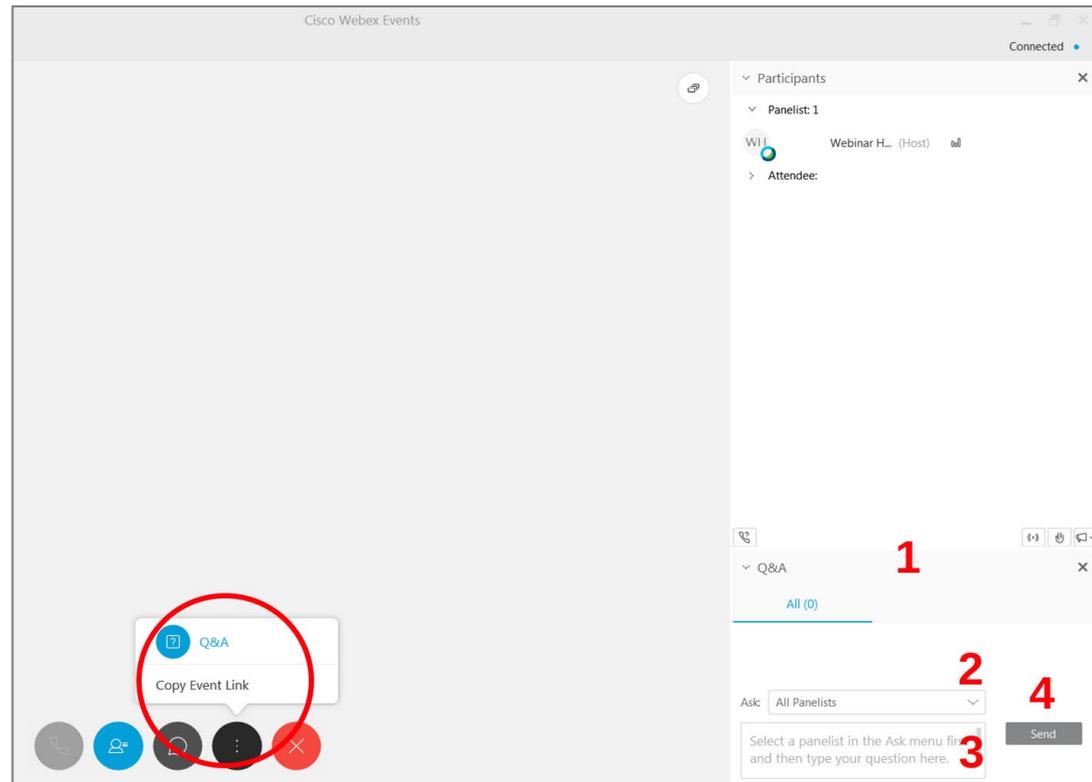
January 31, 2019 2:00 p.m. EST

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## How to Use WebEx Q & A

1. Open the Q&A panel
2. Select “All Panelists”
3. Type your question
4. Click “Send”



## Moderator



**Chelsea Gulinson**, Staff Attorney, Network for Public Health Law – Western Region

- J.D., Sandra Day O'Connor College of Law, Arizona State University
- Research interests/areas of expertise:
  - Emergency Preparedness
  - Opioid Crisis
  - Reproductive Health and Technology

## Presenter



**Leila Barraza**, Consultant, Network for Public Health Law – Western Region, Assistant Professor, University of Arizona Mel & Enid Zuckerman College of Public Health

- J.D., Sandra Day O’Connor College of Law
- M.P.H., Mel & Enid Zuckerman College of Public Health
- Research interests/areas of expertise:
  - Rural health
  - Vaccine litigation
  - Health disparities
  - Emergency preparedness

## Presenter



**Kore Redden**, Bio-Defense Preparedness and Response Administrator, Pinal County Public Health Services District

- M.P.H., A.T. Still University
- Research interests/areas of expertise:
  - Emergency Preparedness
  - Emergency outbreak response
  - Infectious disease
  - Fire service

## Presenter

**Nancy Barrera**, Senior Attorney, California Department of Public Health, Office of Legal Services

- J.D., University of the Pacific, McGeorge School of Law
- M.P.H., San Jose State University
- Research interests/areas of expertise:
  - Tobacco control
  - Chronic diseases
  - Vital records
  - Injury control
  - Family health programs
  - Health care quality

# Immunization in Post Secondary Education:

## Addressing Vaccine-Preventable Disease on University Campuses

***Leila Barraza, J.D., M.P.H.***

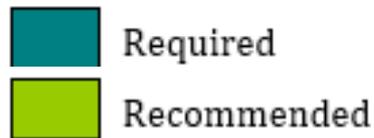
Assistant Professor  
Community, Environment & Policy  
Mel and Enid Zuckerman College of Public Health  
University of Arizona

Senior Consultant  
The Network for Public Health Law – Western Region

# Principle Objectives

- Explore the various approaches universities in the Western Region take for requiring and recommending immunization.
- Examine university responses to large-scale outbreaks of vaccine-preventable disease.
- Analyze interactions between state law and university policy on post-secondary immunization requirements and recommendations.

# University Vaccination Policies in the Western Region (as of January 2019)

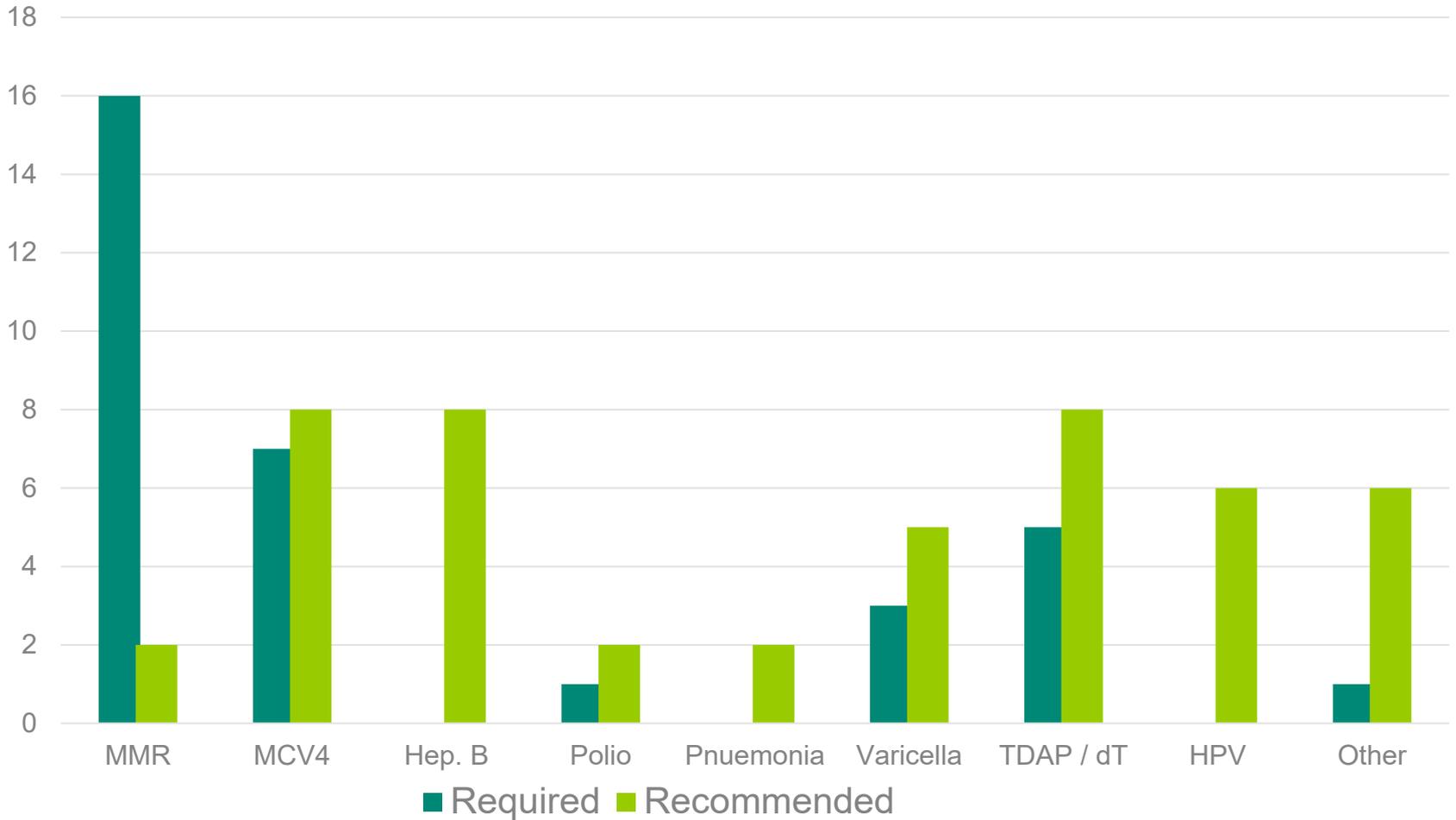


State	School	Public/ Private	MMR	MCV4	Hep. B	Polio	Pneumonia	Varicella	TDAP / dT	HPV	Others	Vaccination Exemptions
AK	University of Alaska - Anchorage	Public	Required	Recommended					Required		Required	Medical and Religious
AZ	Arizona State University	Public	Required	Recommended					Recommended	Recommended	Recommended	Unpublished
	Grand Canyon University	Private	Required	Required								Medical
CA	University of California – Los Angeles	Public	Required	Required				Required	Required			Unpublished
	University of Southern California	Public	Required	Required	Recommended	Recommended	Recommended	Required	Recommended	Recommended	Recommended	Unpublished
CO	University of Colorado - Boulder	Public	Required	Recommended								Medical, Religious, and Personal
	Regis University	Private	Required	Required								Medical, Religious, and Personal
HI	University of Hawaii	Public	Required	Recommended	Recommended	Recommended		Recommended				Proof of Immunity, Age
	Hawaii Pacific University	Private	Required									Proof of Immunity, Age
NV	University of Nevada – Las Vegas	Public	Required						Required			Medical and Religious
NM	University of New Mexico	Public	Recommended	Recommended	Recommended		Recommended	Recommended	Recommended	Recommended	Recommended	N/A
OR	Portland State University	Public	Required	Recommended	Recommended			Recommended	Recommended	Recommended	Recommended	Medical and Non-Medical
	George Fox University	Private	Required	Recommended	Recommended				Recommended			Medical and Non-Medical
TX	Texas A&M University	Public	Recommended	Required	Recommended			Recommended	Recommended	Recommended		Medical and Reasons of Conscience
	Baylor University	Private	Required	Required	Recommended			Recommended	Required		Recommended	Age
UT	Utah State University	Public	Required			Required		Required	Required			Personal, Medical, and Religious
	Brigham Young University - Utah	Private										[Currently Unavailable]
WA	University of Washington	Public	Required	Required								Medical, Religious, and Personal
	Gonzaga University	Private	Required	Recommended					Recommended	Recommended		Unpublished



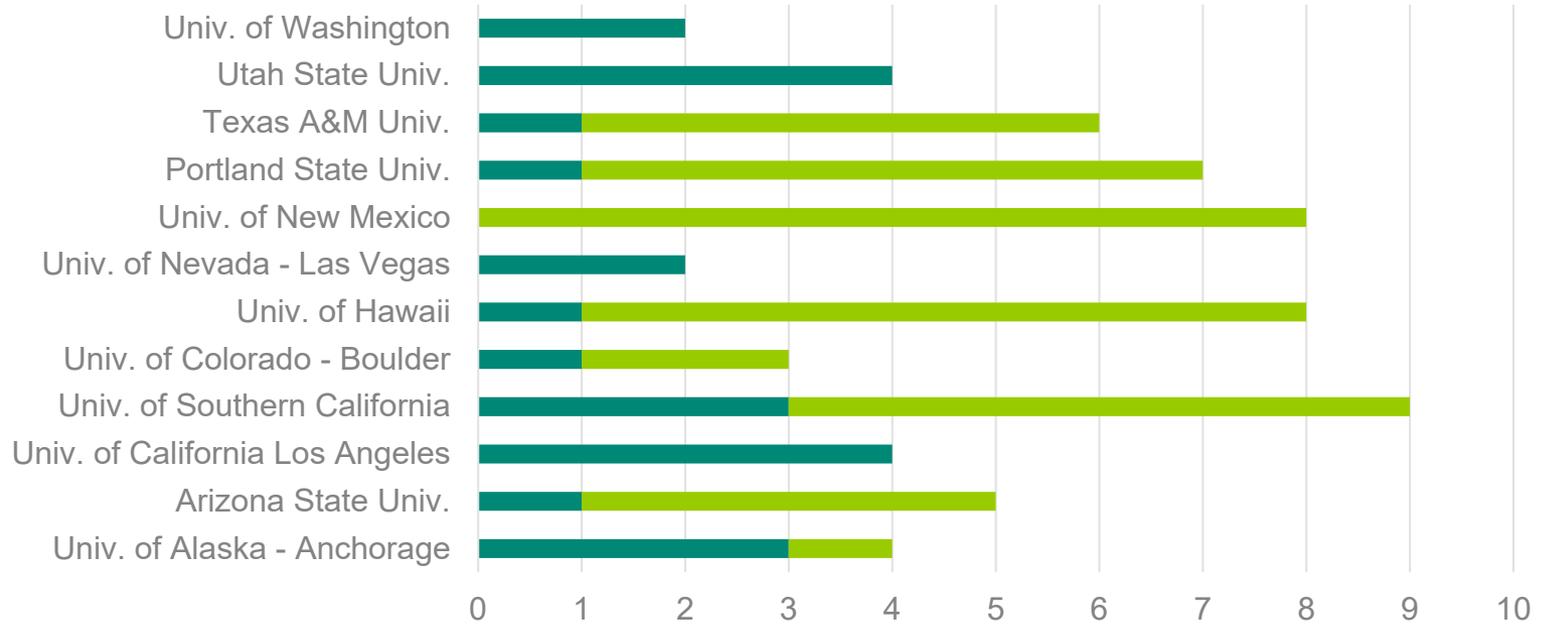
# Western Region Universities' Vaccination Requirements

Frequencies of Requirements and Recommendations



(as of January 2019)

## Public



## Private



(as of January 2019)

# Most Immunization Requirements

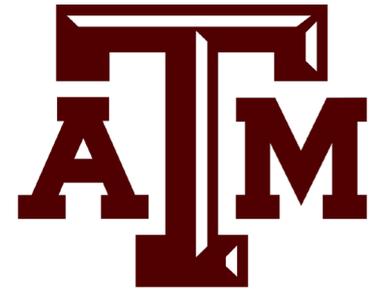
## Public Universities



## Private Universities



## Public Universities



## Private Universities



# Response to Trends and Alignment with Primary/Secondary Education

## Utah State University

“The nationwide rate of vaccine-preventable illnesses has been increasing steadily for some time and the Cache Valley area that serves as the home of Utah State University has experienced a similar trend. For this reason . . . we [now] require that you provide proof of immunizations for Measles, Mumps, Rubella, Polio, Chickenpox, Tetanus, Diphtheria and Pertussis. . . . These are currently already required for entry in to grade schools, middle schools, junior highs, and high schools within the state of Utah.”



## University of New Mexico

- No vaccination requirements
- Ranks recommendations based on level of priority

Category A (Priority)	Category B	Category C (indicated under special conditions)
Measles, Mumps, Rubella (MMR) Meningococcal (Men serogroups A,C,W and Y) Varicella (Var)	Hepatitis B (HepB) Hepatitis A (HepA) Human Papilloma Virus (HPV)	Pneumococcal (Conjugate and Polysaccharide) Meningococcal (serogroup B)
<b>Category A<sub>1</sub></b> Tetanus, Diphtheria, Pertussis (Tdap) Influenza		
<b>Category D (Vaccines That Are Region-Specific to International Travel)</b>		
Typhoid Yellow Fever Japanese Encephalitis Rabies		

## Nevada

**Nev. Admin. Code § 441A.775** requires that any student under the age of 23 must provide proof of immunity to bacterial meningitis, if they wish to reside in on-campus housing as a freshman.

## Texas

In 2011, Texas enacted **Tex. Educ. Code § 51.9192**, which directed the Texas Higher Education Coordinating Board to require all entering students to be vaccinated against bacterial meningitis if they are under the age of 22.

# Universities with Largest Mumps Outbreaks (since 2014)

 Required  Recommended

State	School	Cases	Semester(s)	Pre-Outbreak MMR	Post-Outbreak MMR	Relevant State Legislation
IA	University of Iowa	301	Fall 2015 – Spring 2016			N/A
IL	University of Illinois at Urbana-Champaign	317	Spring 2015 – Spring 2016			77 ILL. ADM. CODE 694 (Effective Aug. 21, 2016)
MA	Harvard University	40	Spring 2016			105 Code Mass. Reg. 220.600 (Effective Nov. 21, 2016)
NY	Syracuse University	118	Fall 2017			10 NYCRR Subpart 66-2 (Effective May 31, 2000)
OH	Ohio State University	208	Spring 2014			N/A

State	School	Public/Private	MMR	MCV4	Hep. B	Polio	Pneumonia	Varicella	TDAP / dT	HPV	Others	Vaccination Exemptions
IA	University of Iowa	Public										Medical and Religious
IL	University of Illinois at Urbana-Champaign	Public										Religious
MA	Harvard University	Private										Medical and Religious
NY	Syracuse University	Private										Medical and Religious
OH	Ohio State University	Public										Medical and Non-Medical

# University Responses



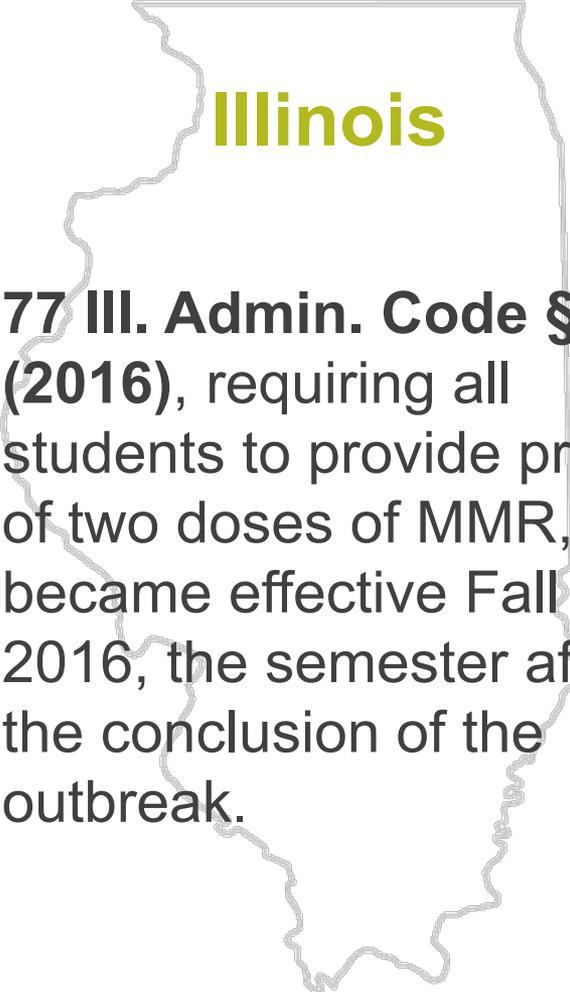
- Held a vaccination campaign in which 8,200 MMR vaccines were administered to students (Aug. 6–27, 2015).
- Recommended students receive a third dose of MMR during the outbreak.



- Held a vaccination campaign in which 4,700 MMR vaccines were administered to students (Nov. 10–19, 2015).
- Recommended students receive a third dose of MMR during the outbreak.

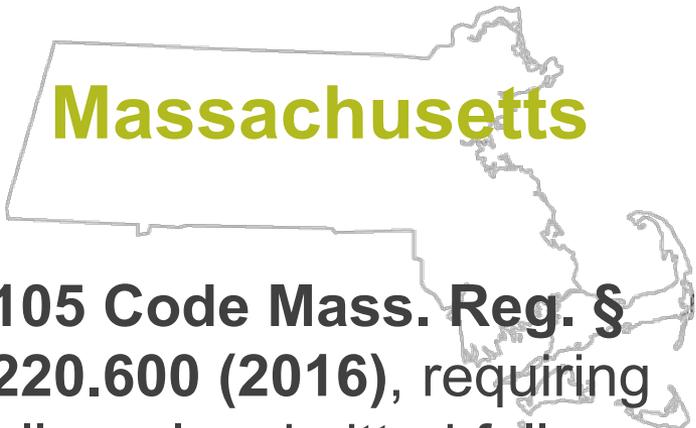


- Began requiring students to provide proof of MMR vaccination in Fall 2014, the semester after the outbreak.
- Now requires seven vaccinations to live on campus, two more than any other school in this study.



## Illinois

**77 Ill. Admin. Code § 694 (2016)**, requiring all students to provide proof of two doses of MMR, became effective Fall 2016, the semester after the conclusion of the outbreak.



## Massachusetts

**105 Code Mass. Reg. § 220.600 (2016)**, requiring all newly admitted full- and part-time students to provide proof of two doses of MMR, became effective Fall 2016, the semester after the conclusion of the outbreak.

# Pre- v. Post-Matriculation Documentation Requirements



V.



- Proof of MMR immunization must be submitted and approved before the student can arrive on campus.
- Students who do not have proof of MMR immunization on file are not permitted to register for first semester classes.

- MMR immunization requirements are not enforced until new students attempt to register for classes in their second semester.

# Conclusions

- Inconsistencies and shortcomings of immunization policies increase the risk of vaccine-preventable disease outbreaks on university campuses.
- States may implement minimum standards, but universities generally have the power to create their own policies.
- Delayed implementation and various vaccine exceptions may present barriers to successful immunization policy.

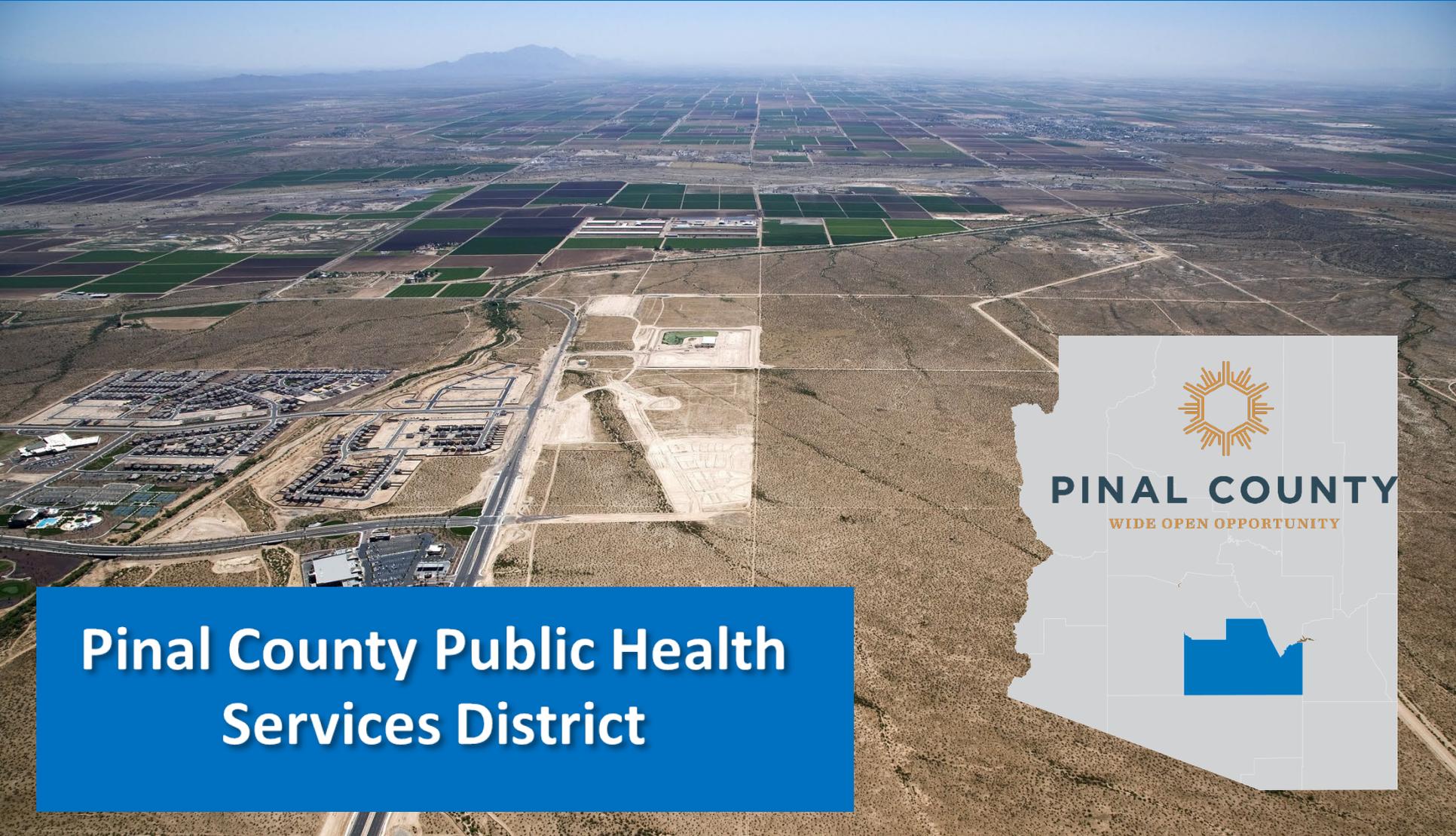
# Acknowledgements

**Special thanks to Michelle Castagne, J.D. Candidate (2021), and Drew Hensley, J.D. Candidate (2020), at ASU's *Center for Public Health Law & Policy* for his assistance with this presentation.**

**[ibarraza@email.arizona.edu](mailto:ibarraza@email.arizona.edu)**



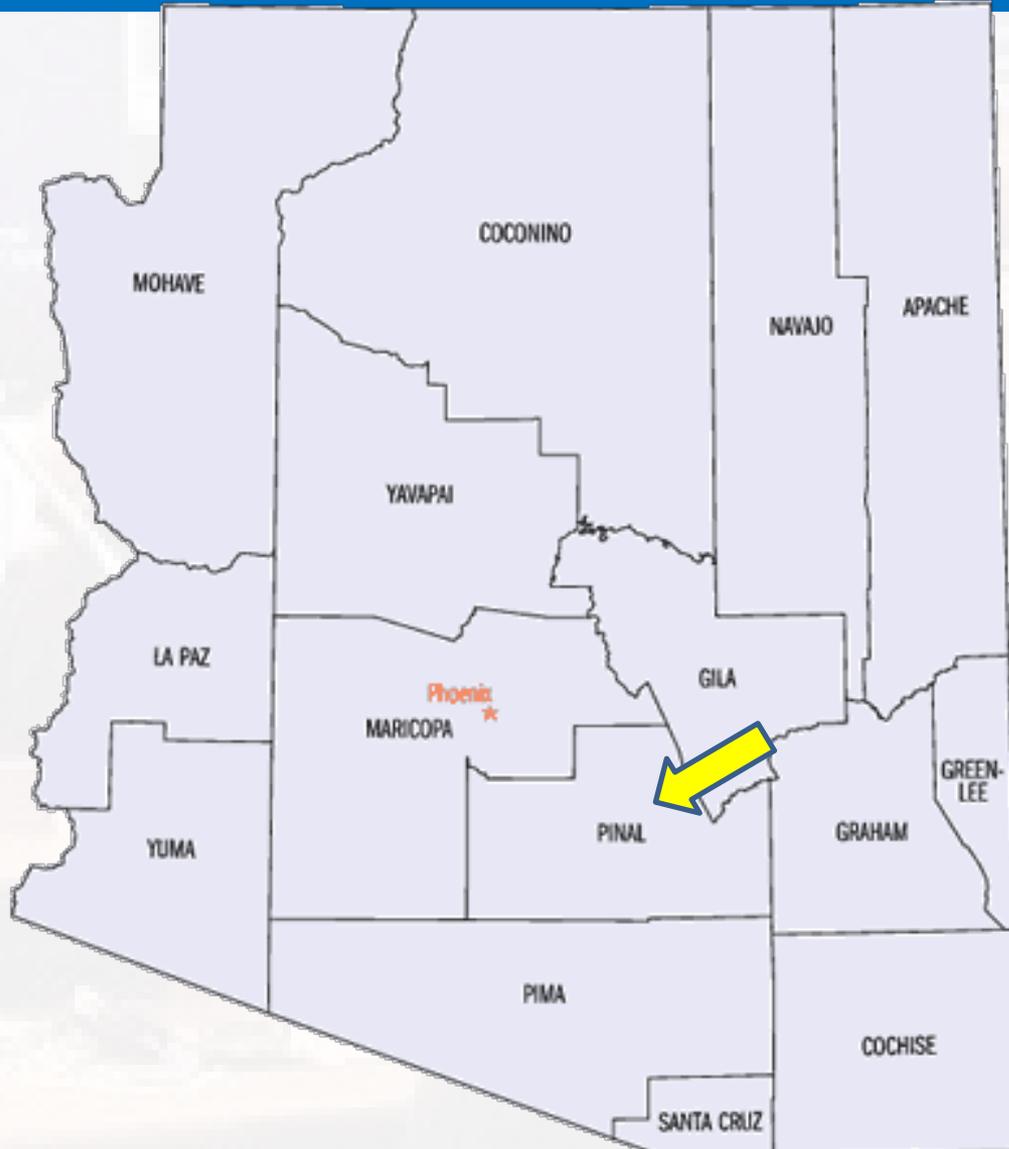
# Vaccine Preventable Disease Outbreaks



**Pinal County Public Health  
Services District**



# Arizona



2014



# 2010-current

- **Varicella Outbreak (November – December 2010)**
- **Measles Outbreak (January-February 2015)**
- **Other Outbreaks**



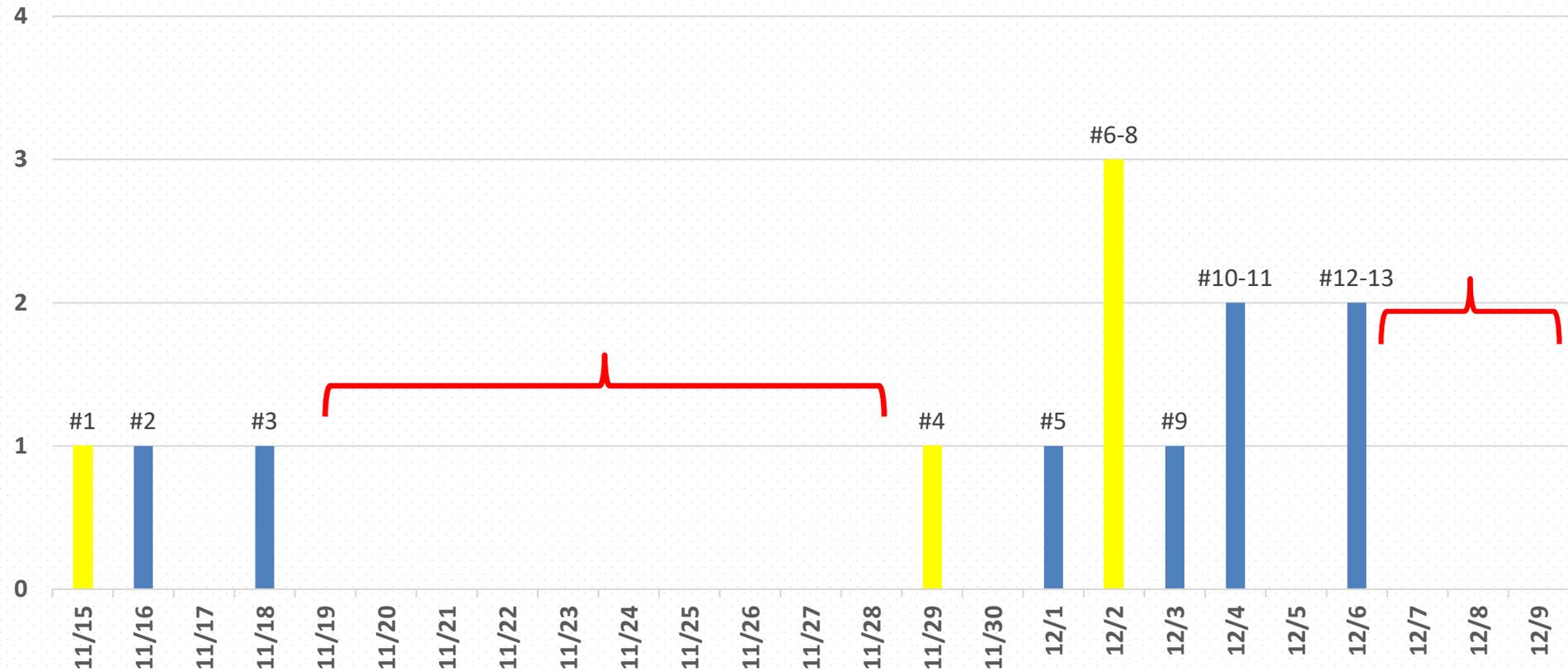
# 2010 Varicella Outbreak

- **Varicella**
  - **K-8 Public School**
  - **Post-H1N1**
  - **Completed Back-to-School Vaccinations  
July-August 2010**



# Increased Varicella Cases

## Epi Curve



# 2010 Varicella Outbreak

- **Varicella Conference Call with School**
  - **“Chickenpox parties”**
    - **Risks**
      - **Highly infectious, attack rates can be over 90%**
      - **Fatal in 1:100,000 children; 1:5,000 adults**
      - **Fatal in 5-10% of immune naïve children with leukemia**
      - **Neonates at increased risk for severe disease**
      - **Mothers who develop the disease immediately before delivery can pass infection to newborn with up to a 30% mortality rate**
      - **Infectious during pregnancy can cause fetal death: congenital varicella syndrome**



# This is a Vaccine Preventable Disease!

- **Vaccine introduced in 1995**
  - **1-dose required in AZ (85.7% efficacy\*)**
    - **Age 12-15 months**
  - **2-dose recommended (99.6% efficacy\*)**
    - **Age 4-6 years**



# Mass Vaccination Considerations

- **1<sup>st</sup> Wave**
  - **Thanksgiving Holiday**
- **2<sup>nd</sup> Wave**
  - **Just prior to Winter Break/Christmas**
- **1<sup>st</sup> Dose, Exemption**
  - **Vaccinate these populations (vaccination packets)**
  - **Exclude exemptions that will not vaccinate**
    - **Arizona Revised Statute §15-873**



# Population Data

- **Student population**
  - **Total**
    - **1-Dose Coverage (n = 487)**
    - **Exemption (n = 24)**
- **Faculty and Staff population**
  - **Infants at home**
  - **Pregnant (exclude)**
  - **Unvaccinated versus immunity**



# Mass Vaccination

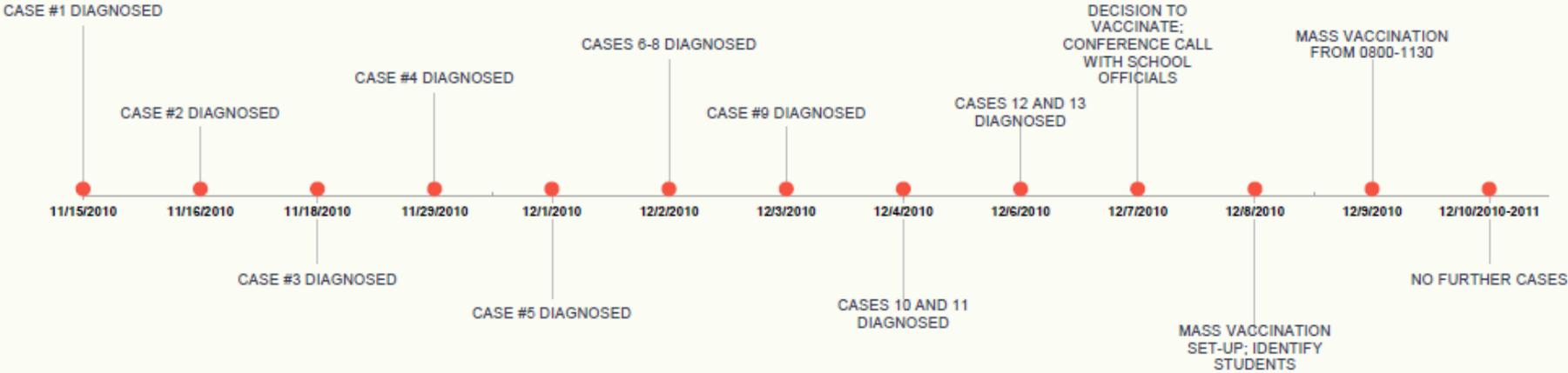
- **Total amount of students vaccinated: 112**
- **Total amount of exempt students receiving vaccination: 12**
- **Total amount of students evaluated: 130**
  - **2<sup>nd</sup> dose and proof provided upon arrival**
  - **Identified health issues prohibiting vaccination**
  - **20 county personnel**
    - **Facility Set-Up: 22 minutes**
    - **Vaccine administration (entrance to exit): 2 minutes**



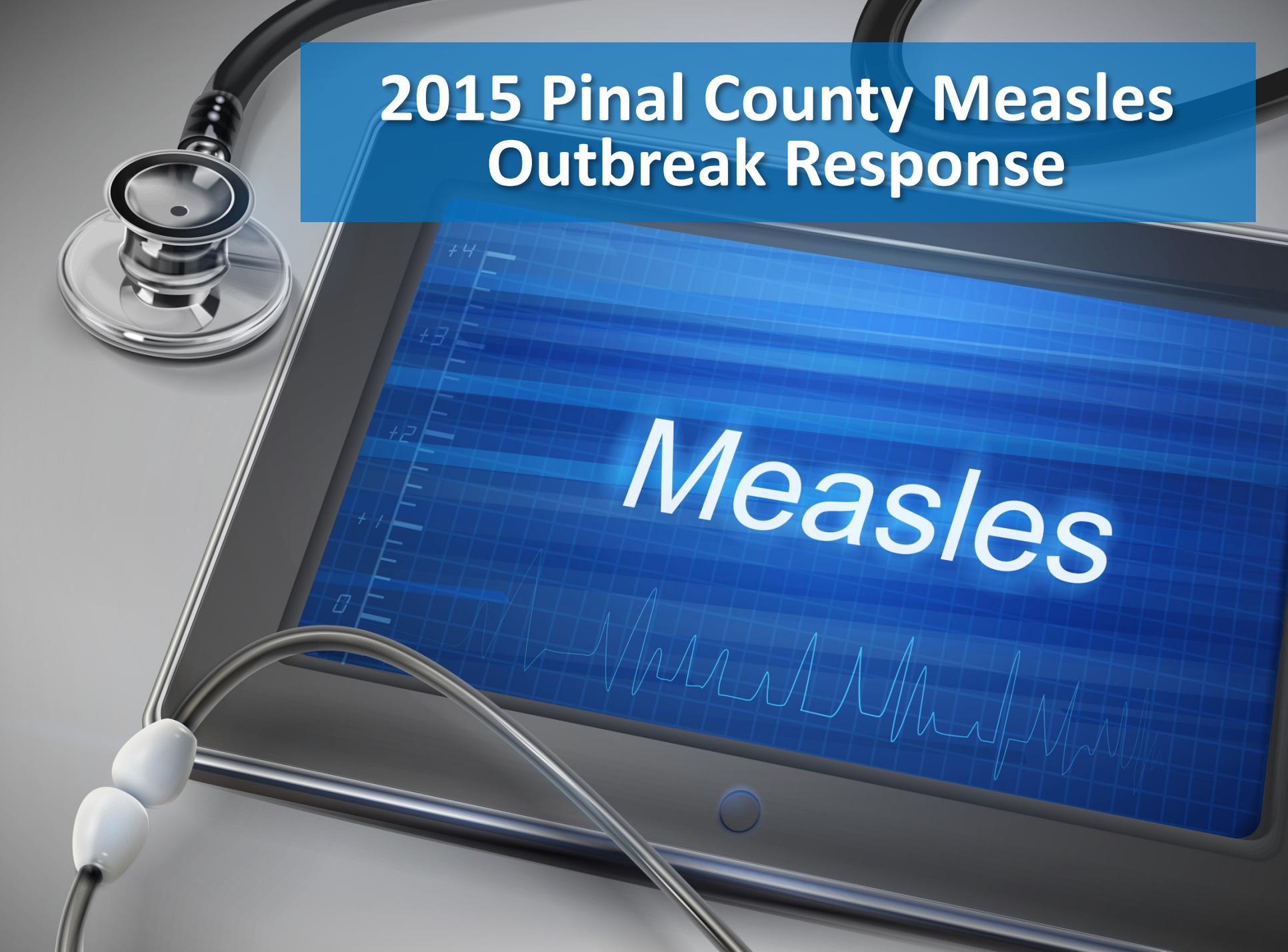
# 2010 Varicella Response

Varicella Outbreak

## TIMELINE



# 2015 Pinal County Measles Outbreak Response

A stethoscope is positioned on the left side of the image, with its chest piece resting on a tablet. The tablet screen displays a blue grid with a white line graph that resembles a pulse or ECG. The word "Measles" is written in large, white, sans-serif font across the center of the screen. The background is a light gray surface.

*Measles*

# 2015 Measles Response



# Measles

- Highly contagious respiratory virus
  - Airborne
  - Those unvaccinated or not immune have over a 90% chance of contracting measles when exposed
  - The virus can live in the air up to 2 hours after an infected individual is no longer in the room or immediate area
- Signs and Symptoms
  - 21-day incubation period
  - High fever (over 101 degrees F); cough; runny nose; red, watery eyes; and
  - Rash (infectious 4 days prior to rash and 4 days after rash)
- Severe Complications
  - 1 child out of every 1,000 will develop encephalitis (swelling of the brain), which can lead to convulsions and can leave the child deaf or mentally retarded
  - For every 1,000 children, 1 or 2 will die from measles

# Prevention of Measles

- Vaccination
  - MMR (Measles, Mumps, Rubella)
  - Two (2) doses of MMR offers the best protection
- Vaccine Schedule
  - 1 years old
  - 4-6 years of age
- Populations that are unable to be vaccinated
  - Under 1 years of age
  - Life-threatening allergic reaction to vaccine components or to the antibiotic neomycin
  - Pregnant women who have not been previously vaccinated
  - Immunocompromised individuals

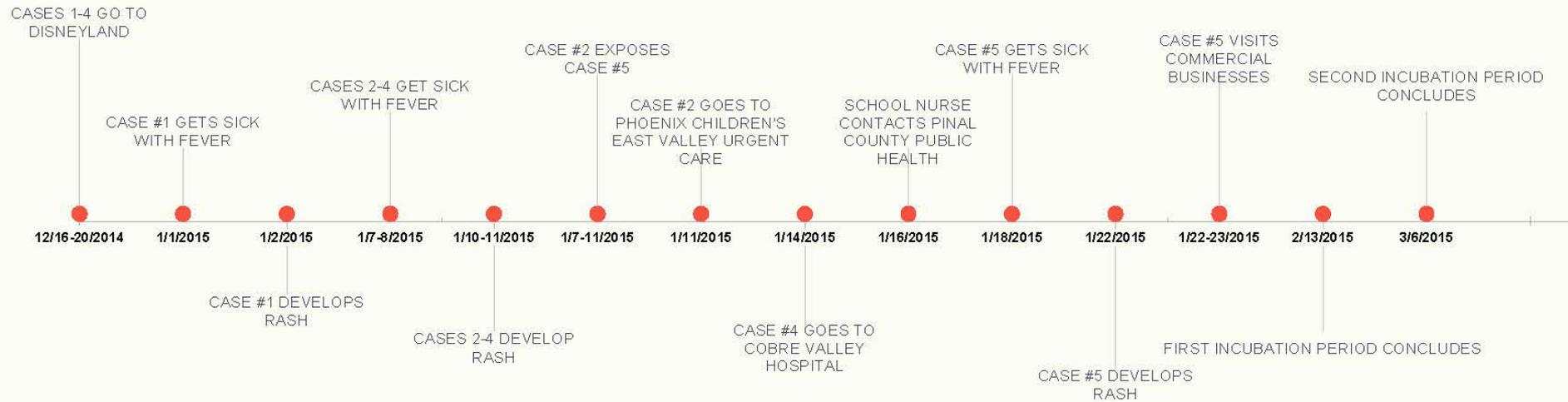
# Current Timeline of Positive Measles Cases in Arizona

- Nationwide Outbreak: 102 Cases in 14 States linked to Disneyland
- 7 Cases in Arizona
  - Two Cases in Maricopa County (first two positive cases in Arizona)
    - First Case linked to travel to Disneyland – January 22, 2015
    - Second Case announced on January 27, 2015
  - Five Cases in Pinal County
    - Four cases in one family; linked to travel to Disneyland – January 23, 2015
    - Fifth case exposed to the family of four cases – January 27, 2015
      - Visited several businesses during incubation period
      - Incubation Period concludes on February 13, 2015

# Timeline: *Pinal County Cases*

## Measles Outbreak

### TIMELINE



# Public Messaging

- Press Releases/Media Coverage (Local and National)
- Messaging and Direction to Healthcare Providers and Hospitals
  - Signage and precautions
- Measles Alert Signage
  - Locations where 5<sup>th</sup> case visited
  - ½ hour prior to purchase transactions and 2 hours after
- Posters and Flyers
  - Large posters in common public locations
  - Flyers at businesses for patrons
  - Public Health contact numbers

# ALL ABOUT MEASLES

## for Parents, Families, and the Community



PINAL COUNTY  
wide open opportunity

### MEASLES SYMPTOMS

Measles disease starts with a high fever followed by the “3 C’s” that include cough, runny nose (coryza), and/or red, watery eyes (conjunctivitis). A red, blotchy rash begins 2-4 days after onset. The rash begins at the hairline and spreads down to the face, body, and then to the hands and feet over the next 3 days. The rash then fades in the same order it appeared. The rash lasts 5-6 days.

Up to a third of measles cases become severe and may progress to pneumonia, seizures, encephalitis, brain damage, and death.



### MEASLES PREVENTION:

The best way to prevent measles is through two doses of MMR (measles-mumps-rubella) vaccine given according to the recommended schedule:

- ☑ First dose of MMR—given on or after the first birthday
- ☑ Second dose of MMR—recommended to be given at age 4-6 years, may be given as soon as 1 month after the first dose.

Since MMR vaccine is not routinely given to children less than one year of age, it is especially important for family members of young children to make sure that everyone in their household is up to date on their vaccinations to protect the family from illness. Please contact the Pinal County Public Health Services District for further information about MMR vaccine

### HOW IS MEASLES SPREAD?

Measles is very contagious and can be spread when an infected person coughs or sneezes. The virus can live in the air and on surfaces for at least two hours. A person with measles is infectious four days before the start of the rash until 4 days after the rash begins.

### WHAT TO DO IF YOU THINK YOU HAVE MEASLES

If you think you may have measles, **CALL YOUR HEALTH CARE PROVIDER FIRST** for instructions on what to do. Calling ahead will avoid exposing others. It is very important to stay home and away from others when sick.

### MEASLES TREATMENT

There is no specific treatment for measles. Measures can be taken to possibly prevent measles in persons who have been exposed.

### Questions?

Contact the Pinal County  
Public Health Services

District

520-509-3555

Or

888-431-1311

[www.pinalcountyz.gov](http://www.pinalcountyz.gov)

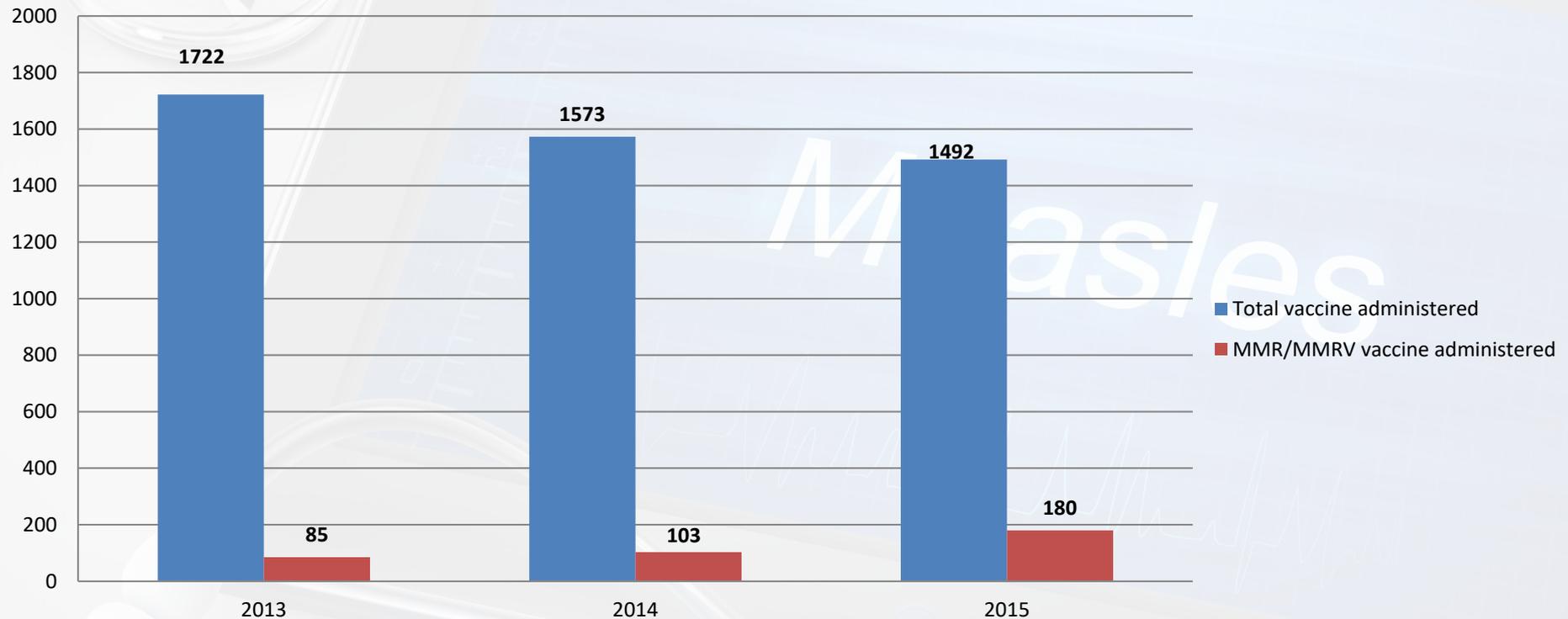
# Schools

- **Preparing schools for outbreak**
  - Arizona Revised Statute on student exclusions (ARS § 15.873)
  - Only schools with exposure to positive cases
  - Affected school had 100% vaccination coverage rate
- **School Coverage**
  - Point of Contact for School Officials and School Nurses
  - Gather exemption and under-vaccinated data
  - Messaging to all schools

# Current Vaccination Rates

## Pinal County Public Health Immunizations Administered by Year (January only)

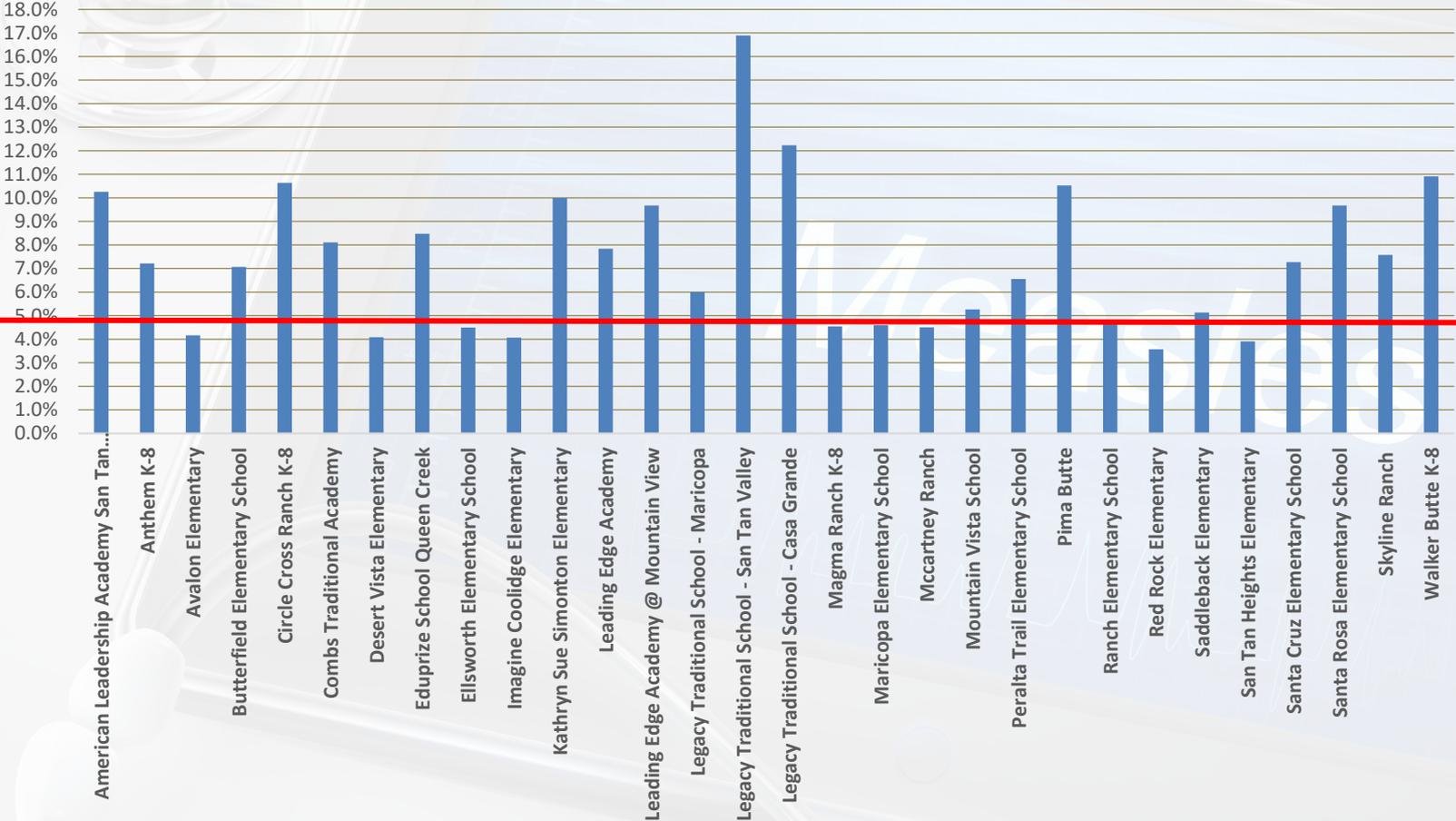
Data Source: Arizona State Immunizations Information System (ASIS)



# Vulnerability in Schools

## Highest Personal Exemption Rates in Pinal County Schools

Source: Arizona Department of Health Services



Pinal County  
4.9%

# 2015 Measles Outbreak Objectives

**Prevent further spread and contain the outbreak by:**

- Identify exposures
- Identify suspect cases
- Identify un- and under-vaccinated individuals
- Public messaging and education
- Link to testing and vaccination

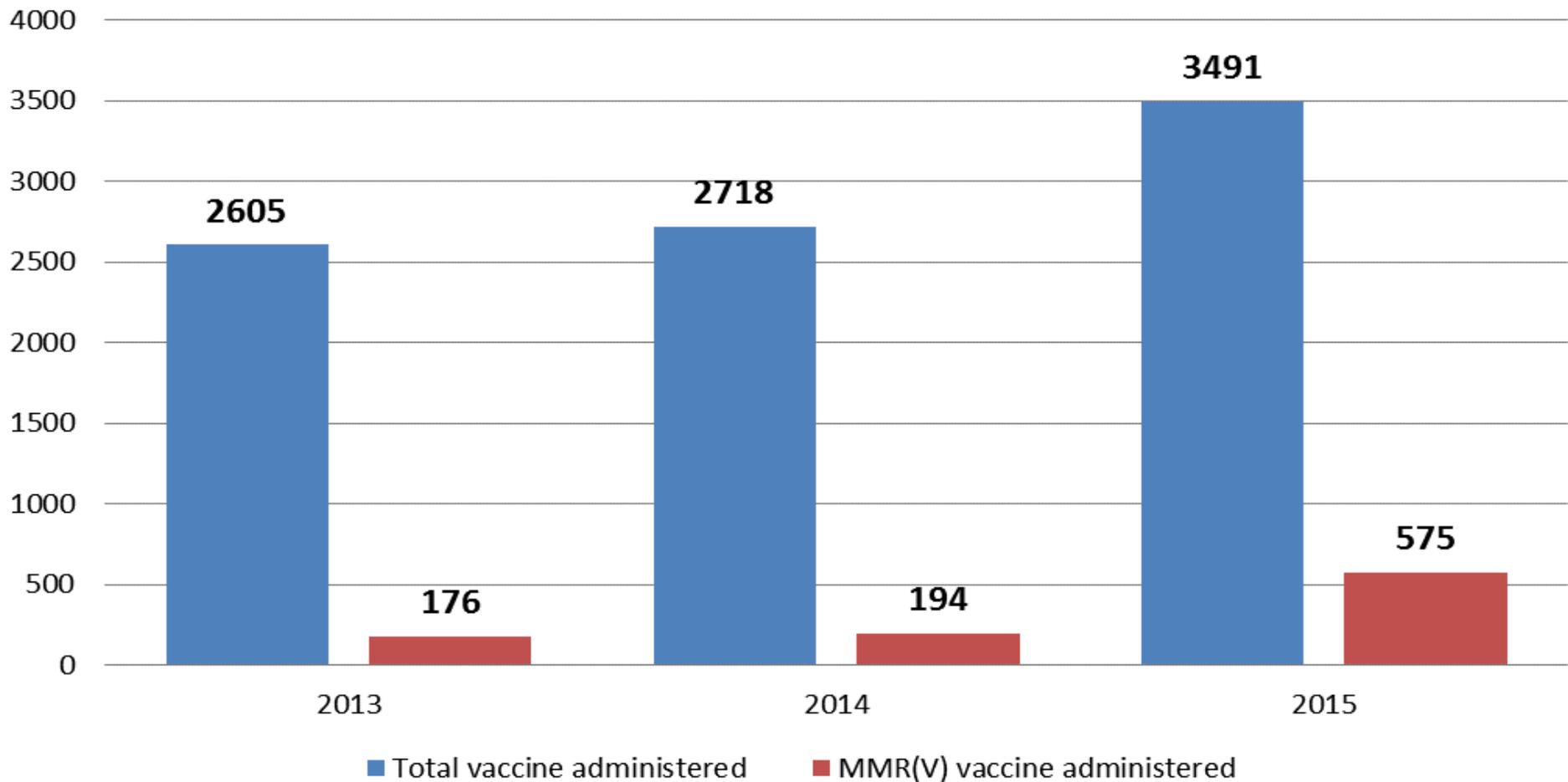
# Clinic Operations

- Vaccination and Education
  - Increase in vaccinations and vaccination inquiry
- WIC Staff to link clients to vaccination services
- Nursing resources trained to assist Communicable Disease Section
  - Specimen collection
- Vaccine Manufacturers - Automated calls and postcard mailings
  - To parents of children missing vaccine dose(s)

# Increase in Vaccination Rates

## Pinal County Public Health Immunizations Administered by Year (*Jan 1-Mar 2 only*)

Data Source: ASIIS/eClinicalWorks eBO Reports



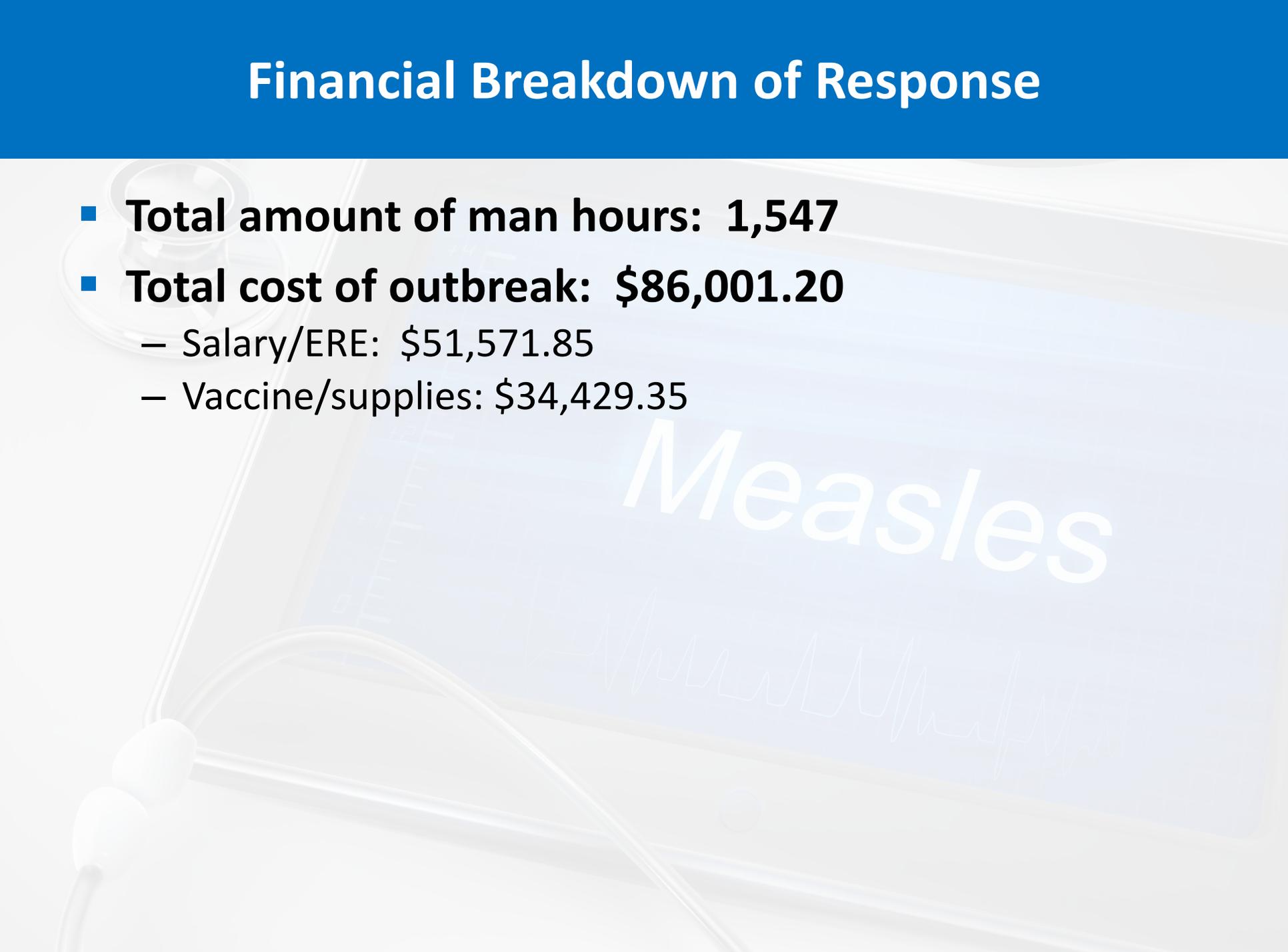
# Incident Overview

- **Activated on 1/23/2015**
- **2/1/2015: Super Bowl XLIX**
- **2/13/2015: first incubation period concludes**
- **3/6/2015**
  - Second incubation period concludes
  - Demobilized outbreak response operations
- **Total confirmed cases in Pinal County: 5**
  - 2 Confirmed cases in Maricopa, 7 total in Arizona

# Financial Breakdown of Response

- **Total amount of man hours: 1,547**
- **Total cost of outbreak: \$86,001.20**
  - Salary/ERE: \$51,571.85
  - Vaccine/supplies: \$34,429.35

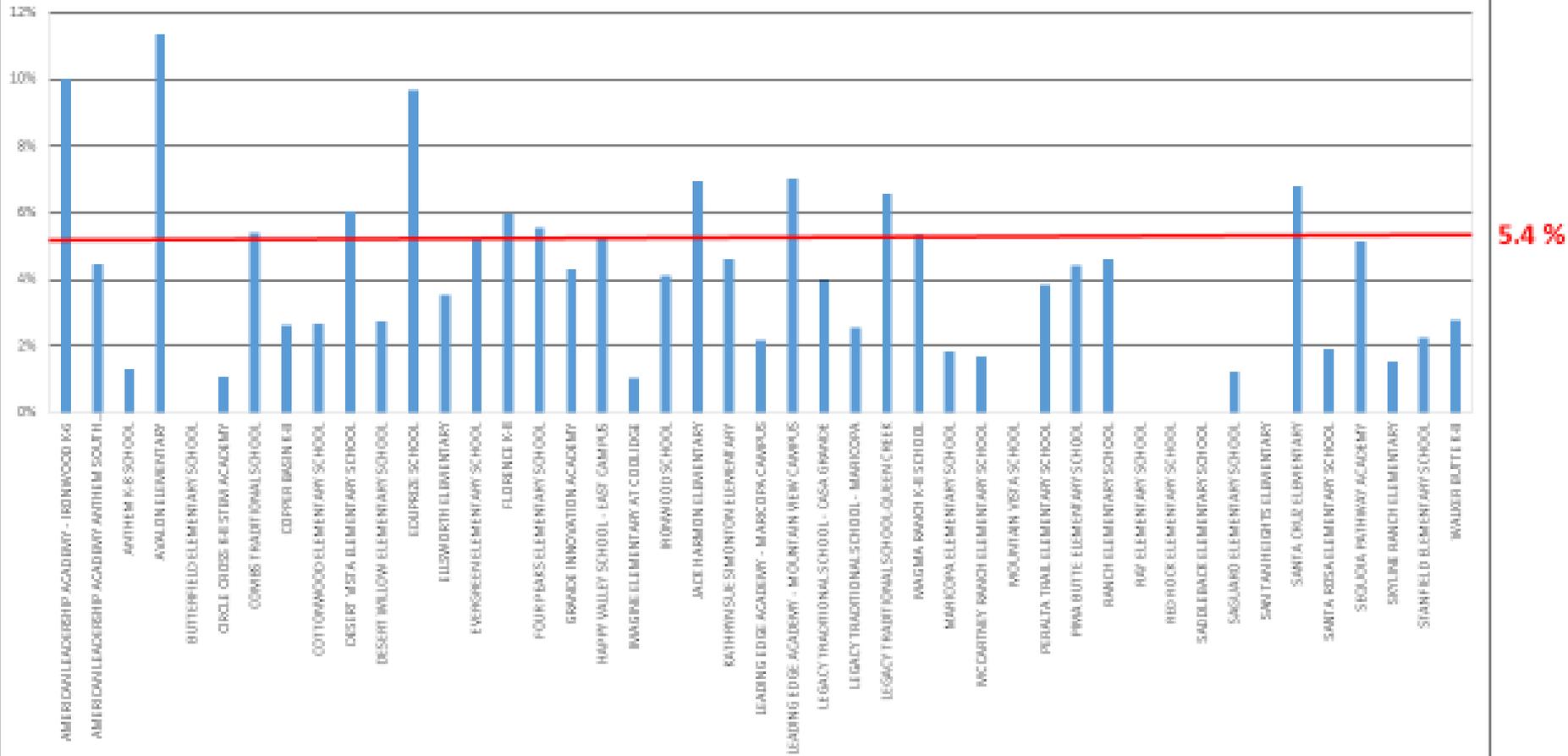
Measles

The background of the slide features a faint, semi-transparent image of a medical monitor. The monitor's screen displays the word "Measles" in a large, white, sans-serif font. Below the text, there is a white waveform, likely representing an ECG or similar medical signal. The monitor is connected to several white cables, and the overall scene is set against a light blue and white background.

# Still Vulnerable

2017 Personal Exemption Percentage Rates in Pinal County Schools

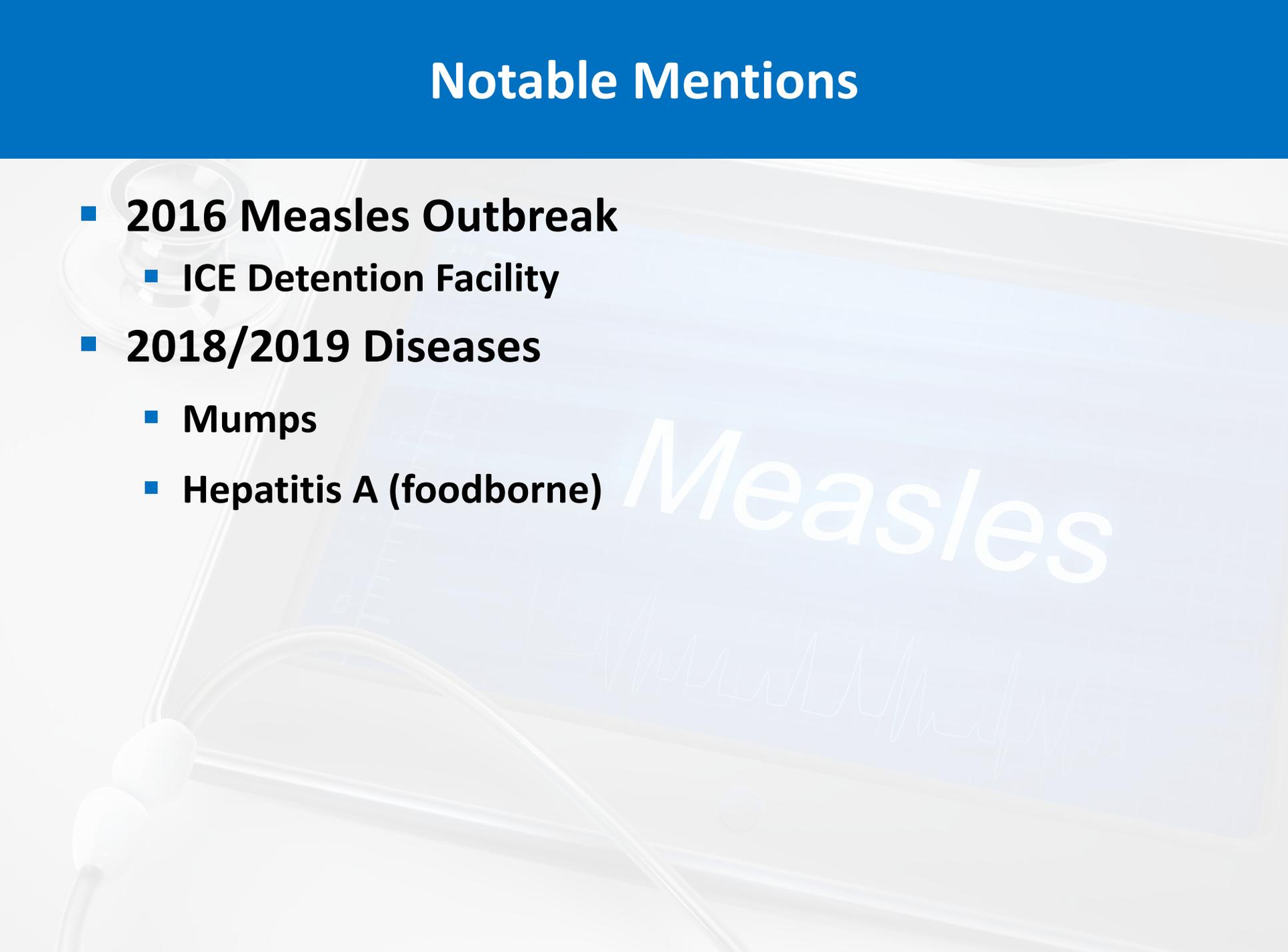
Source: Arizona Department of Health Services



# Notable Mentions

- **2016 Measles Outbreak**
  - ICE Detention Facility
- **2018/2019 Diseases**
  - Mumps
  - Hepatitis A (foodborne)

Measles

The background of the slide features a medical monitor with a white ECG line. The word "Measles" is written in a large, white, sans-serif font across the center of the monitor's screen. The monitor is set against a light blue background with a subtle grid pattern.

# Thank You!

## Any questions??



# THANK YOU!



**PINAL COUNTY**

WIDE OPEN OPPORTUNITY

**Kore Redden, MPH**

**Pinal County Public Health Services District**

**[Kore.redden@pinalcountyz.gov](mailto:Kore.redden@pinalcountyz.gov)**

**520-866-7331 office**

**520-251-2850 cell**

**520-866-6239 Public Health Duty Officer Line**

**[www.pinalcountyz.gov/publichealth](http://www.pinalcountyz.gov/publichealth)**



**PINAL COUNTY**  
WIDE OPEN OPPORTUNITY



# Immunization Law in California

Nancy Barrera, Esq., M.P.H.  
California Dept. of Public Health

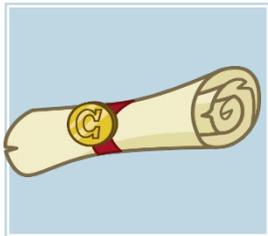


# Disclaimer

- ▶ This presentation is made for information purposes only and should not be construed as legal advice.



# Objectives



**Discuss the context that led to the enactment of CA Senate Bill (SB) No. 277.**



**Review the changes SB 277 made to CA law.**



**Discuss the legal challenges against SB 277.**

# Pre Senate Bill 277

# Assembly Bill No. 2109

(Cal. Stats. 2012, ch. 821)

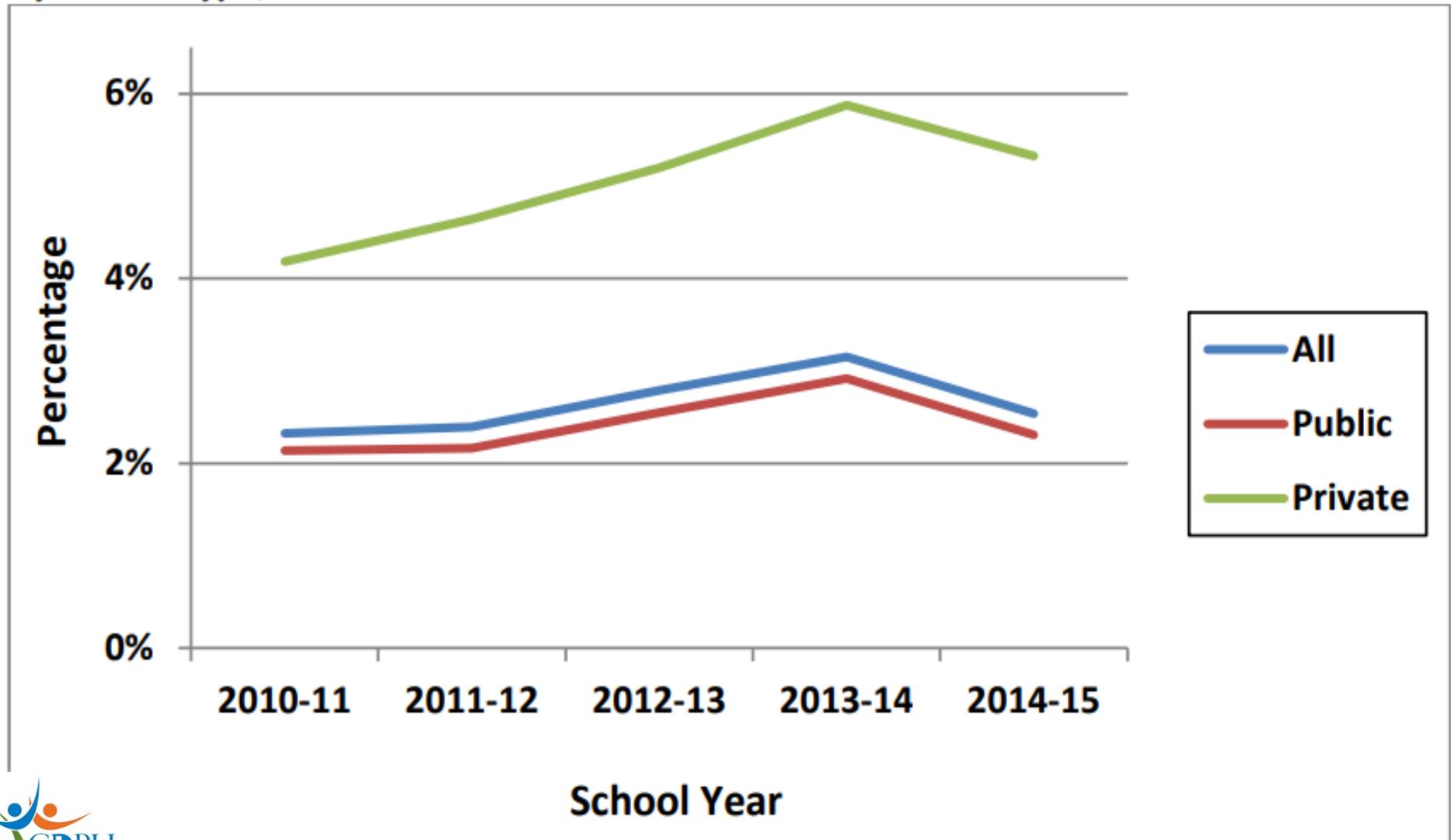
- ▶ Passed by the Legislature in 2012.
- ▶ Amended previous law which only required a letter or affidavit from parent/guardian stating that the immunization is contrary to his/her beliefs.



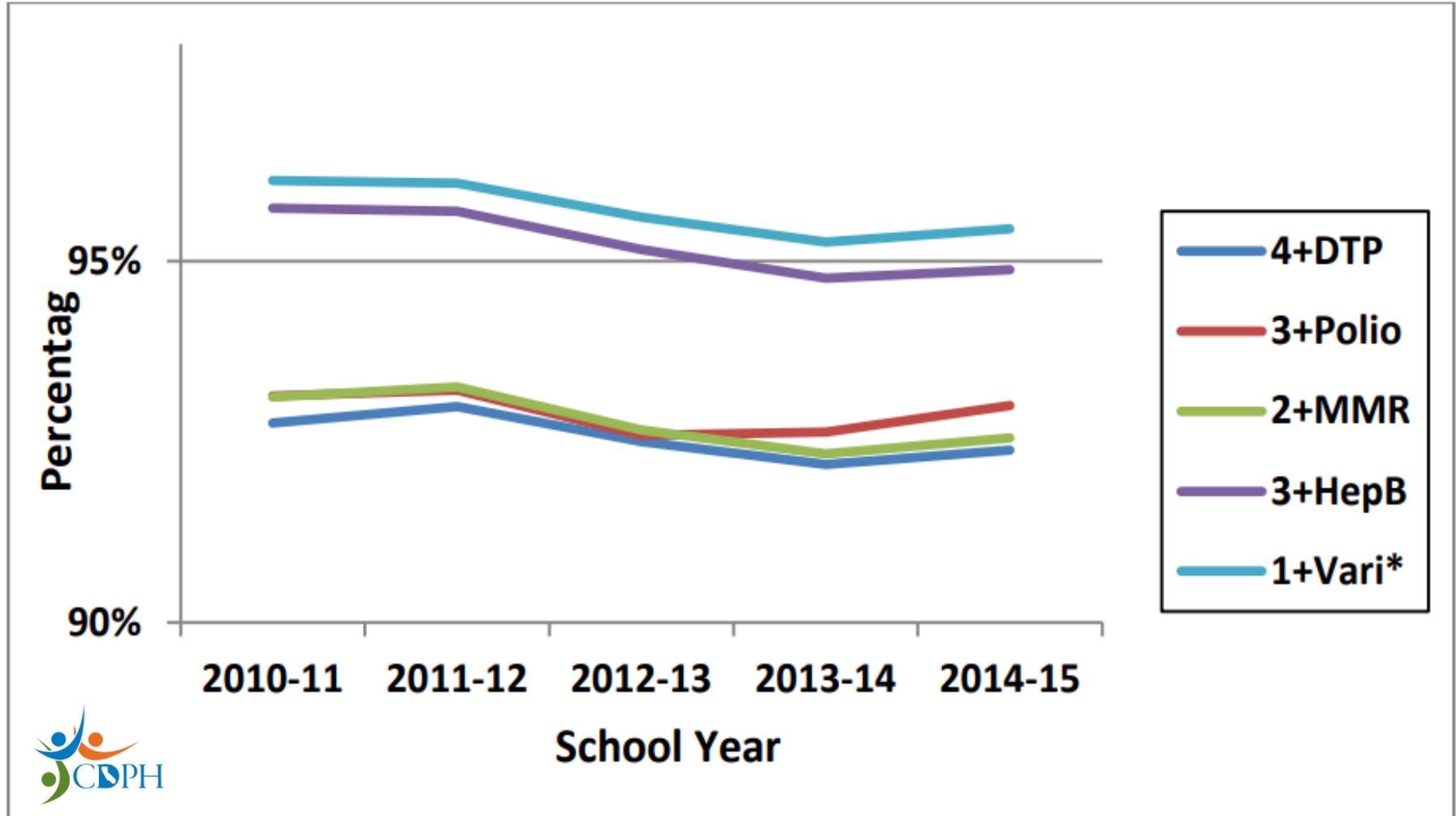
# AB 2109 Cont'

- ▶ Beginning January 1, 2014:
  - Signed letter/affidavit documenting which required immunizations were given and which had not been given on the basis that they were contrary to parent's/guardian's beliefs.
  - Completed form prescribed by California Department of Public Health (CDPH) to include:
    - Signed attestation from a health care practitioner\* that he/she provided the parent/guardian with information about benefits and risks of immunization and risks of communicable diseases; and
    - Signed statement by parent/guardian that he/she received the information provided by the health care practitioner.

**Figure 9: Percentage of California Kindergartners with Personal Beliefs Exemptions, By School Type, 2010-11 to 2014-15 School Years**



**Figure 10: Percentage of California Kindergartners Completing Required Vaccines 2010-11 to 2014-15 School Years**



\*1 or more doses of varicella or physician-documented disease

# California Measles Outbreak



# Measles Outbreak

- ▶ In late 2014, California experienced an uncharacteristically high number of measles cases.
- ▶ Linked to Disneyland Resort Theme Parks in California.
- ▶ Related cases were identified in seven states in the U.S., Mexico, and Canada.
- ▶ Resulted in a total of 147 cases.\*



# Measles

- ▶ The measles virus is a highly contagious virus and spreads through the air through coughing and sneezing.
- ▶ It can live up to 2 hours in the airspace.
- ▶ 90% of the people in close proximity who are not immune will be infected.
- ▶ Vaccine-preventable disease.
  - One dose is 93% effective
  - Two doses 97% effective





# SB No. 277

(Cal. Stats. 2015, ch. 35)



# SB 277

- ▶ Enacted in 2015 and in effect January 1, 2016.
- ▶ Eliminated the personal belief exemption (PBE) from immunization requirements.
- ▶ Requires schools and institutions to not admit pupils unless immunized (July 1, 2016).
- ▶ Exempts pupils:
  - Grandfathered PBEs on file prior to 1/2016 until next grade span
  - Medical exemption by a licensed physician\*
  - Home-based private school
  - Independent study program with no classroom-based instruction
- ▶ Does not prohibit a pupil who qualifies for an Individualized Education Program (IEP) from accessing any special education and related services required by his/her IEP.\*\*



# Legal Challenges to SB 277\*



# *Brown, et al. v. Smith, et al.* (2018) 235 Cal.Rptr.3d 218.)

- ▶ Filed 4/22/2016 as *Buck v. Smith* in Los Angeles Superior Court (No. BC617766).
- ▶ Superior Court dismissed, plaintiffs appealed, and Court of Appeal affirmed lower court's decision.



# *Brown v. Smith Cont'*

- ▶ Appellants claimed SB 277 violated CA Constitution:
  - Free exercise of religion
  - Right to attend school
  - Equal protection
  - Due Process
- ▶ Vaccines are medical experiments and SB 277 violated a statute that provides that no one may be subjected to a medical experiment without his/her informed consent. (Health & Saf. Code, § 24175.)\*

# *Brown v. Smith Cont'*

- ▶ Freedom of religion:

“The State’s wish to prevent the spread of communicable disease clearly constitutes a compelling interest.”

Mandatory vaccination as a condition of school admission does not unconstitutionally infringe the right to free exercise.

*(Jacobson v. Massachusetts (1905) 197 U.S. 11; Prince v. Massachusetts (1944) 321 U.S. 158; Workman v. Mingo County Board of Education (4<sup>th</sup> Cir. 2011) 419 Fed.Appx. 348.)*

# *Brown v. Smith Cont'*

- ▶ Right to attend school:
- ▶ “The right of education, fundamental as it may be, is no more sacred than any of the other fundamental rights that have readily given way to a State’s interest in protecting the health and safety of its citizens, and particularly, school children.” (*Whitlow v. Cal. Dept. of Education* (S.D.Cal. 2016) 203 F.Supp.3d 1079.)

# *Brown v. Smith Cont'*

- ▶ Equal Protection: Plaintiffs argued SB 277 discriminated based on vaccination status.
- ▶ **“It needs no argument to show that, when it comes to preventing the spread of contagious diseases, children attending school occupy a natural class by themselves, more liable to contagion, perhaps, than any other class that we can think of. This effort...was for the benefit and protection of all the people.... It in no way interferes with the right of the child to attend school, provided the child complies with its provisions.”** (*French v. Davidson* (1904) 143 Cal. 658, 662.)

# *Brown v. Smith Cont'*

- ▶ Due Process:
- ▶ Plaintiffs claimed SB 277 was void for vagueness:
  - The court had no difficulty in perceiving the **legislative goal**. It is not new, as “total immunization” has been stated in statute since its passage.\*
  - The **medical exemption** on its face is “sufficiently clear to give fair warning of the required conduct.”

# *Whitlow v. California Dept. of Education* (S.D.Cal. 2016) 203 F.Supp.3d 1079\*

- ▶ Filed July 15, 2016 in federal court
- ▶ Parents claimed SB 277 violated:
  - Due Process
  - Equal Protection
  - Free Exercise of Religion Clause
  - Right of Education under Ca Constitution
- ▶ Sought preliminary injunction enjoining state from enforcing bill.



# *Whitlow v. California Cont'*

- ▶ District Court denied motion for preliminary injunction and held that parents were not likely to succeed on their claims.
- ▶ Plaintiffs withdrew the lawsuit.

# *Whitlow v. California Cont'*

- ▶ Due Process: Plaintiffs alleged SB 277 denied children with PBEs the opportunity to attend school and stigmatized children.
- ▶ “Imposing a mandatory vaccine requirement on school children as a condition of enrollment doesn’t violate due process and **an exemption is not required under law.**” (*Zucht v. King* (1922) 260 U.S.174.)

# *Whitlow v. California Cont'*

- ▶ Equal Protection: Plaintiffs alleged SB 277 treats children with PBEs differently in denying them an education.
- ▶ The children are not similarly situated and even if they were, plaintiffs failed to show children are members of a suspect class.
- ▶ Classifications would be subject to the rational basis review and would meet the test because government has a legitimate govt. purpose.

# *Whitlow v. California Cont'*

- ▶ Freedom of Religion: Plaintiffs claimed that SB 277 fails to provide a religious exemption and violated their free exercise of religion.
- ▶ “The right to practice religion, freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.” (*Prince v. Massachusetts, supra*, 321 U.S. 158.)

# *Whitlow v. California Cont'*

- ▶ Right to Education:
- ▶ “Society has a compelling interest in fighting the spread of contagious diseases through mandatory vaccination of school-aged children.” (*Abeel v. Clark* (1890) 84 Cal. 226.)



# *Whitlow v. California Cont'*

- ▶ Removal of the PBE is necessary or narrowly drawn to serve the compelling objective of SB 277: provide a means for the eventual achievement of **total immunization**.
- ▶ States can impose vaccination requirements without providing religious or conscientious exemptions.



# *Middleton, et al. v. Pan, et al.*

(Jun. 27, 2018, No. 18-55268.)

- ▶ *Pro se* plaintiffs, parents of unvaccinated and partially vaccinated children, filed in U.S. District Court Central District of CA on July 15, 2016, claiming:
  - Legislators, Governor and their spouses violated the Racketeering Influenced and Corrupt Organizations Act (RICO).
- ▶ July 13, 2017, the U.S. District Court dismissed the claims in Plaintiffs' First Amended Complaint with leave to amend.

# *Middleton v. Pan Cont'*

- ▶ Plaintiffs filed a Second Amended Complaint:
  - Added as defendants counsel for defendants (Deputy Attorneys General).
  - Allege RICO violations for introducing, sponsoring, voting for, and persuading others to vote for or signing into law SB 277.
  - Allege conspiracy to promote the sale and use of biological and chemical weapons.

# *Middleton v. Pan Cont'*

- ▶ 12/18/2017 the U.S. Magistrate Judge recommended that the SAC be dismissed with prejudice. (*Middleton v. Pan*, 2017 WL 7053936.)
- ▶ The acts of introducing, voting for, persuading colleagues to vote for, and signing legislation constitutes legislative activities entitled to absolute immunity. (*Bogan v. Scott-Harris* (1998) 523 U.S. 44.)
- ▶ The Eleventh Amendment bars suits for damages against the Governor in his official capacity. The Governor's only connection to SB 277 is his general duty to enforce California law.
- ▶ State government attorneys are absolutely immune from suit in an official capacity and individual capacity for conduct during performance of official duties. (*Bly-Magee v. California* (9<sup>th</sup> Cir. 2001) 236 F.3d. 1014.)

# *Middleton v. Pan Cont'*

- ▶ 1/25/18, the U.S. District Court accepted recommendation of the U.S. Magistrate Judge and dismissed the case with prejudice.
- ▶ Plaintiffs appealed but appellants failed to file the opening brief and the U.S. Court of Appeals for the Ninth Circuit orders dismissal of the appeal for failure to prosecute, 6/27/18. (*Middleton v. Pan*, June 27, 2018, 18–55268.)

*Torrey-Love, et al. v. California Department of Education, et al.* (Case No. 5:16-cv-2410.)

- ▶ Parents and their under- and un-immunized children and a nonprofit organization filed in U.S. District Court Central District of California on November 21, 2016.
- ▶ Sought an injunction claiming SB 277 violated:
  - Due Process
  - Equal Protection
- ▶ Court denied motion for preliminary injunction and dismissed January 12, 2017.

# *Love, et al. v. Department of Education, et al.* (2018) 29 Cal.App.5<sup>th</sup> 980

- ▶ Parents and their children and interest group filed action April 4, 2017 in Superior Court, Placer County. (Case No. SCV0039311.)
- ▶ Superior Court decided in favor of state and plaintiffs appealed.
- ▶ Claimed Violations of Ca Constitution:
  - Due Process
  - Right to Privacy
  - Right to Public Education
  - Free Exercise of Religion
- ▶ Court of Appeal affirmed Superior Court's decision.

# *Love v. Dept. of Education Cont'*

- ▶ Due Process
- ▶ “The objective of total immunization is not served by a law that allows for exemptions, whether the exemption rate is 2% or 25%.” While removing the exemption is an aggressive step, so, too, is the goal of providing a means for the eventual achievement of total immunization.”
- ▶ “An aggressive goal requires aggressive measures, and the State of California has opted for both.”

*(Whitlow v. California, supra, 203 F.Supp.3d 1079.)*

# *Love v. Dept of Education Cont'*

- ▶ Compulsory immunization has long been recognized as the gold standard for preventing the spread of contagious diseases.
- ▶ When belief exemptions to vaccination guidelines are permitted, vaccination rates decrease, and community immunity wanes if large numbers of children do not receive required vaccinations. (*Brown, et al. v. Smith, et al.* (2018) 235 Cal.Rptr.3d 218.)

# *Love v. Dept. of Education Cont'*

- ▶ SB 277 Right to Privacy claims alleged:
  - Required children to reveal personal medical information to attend a free public school; and
  - Required parents and children to forego control over the integrity of the children's bodies.



# *Love v. Dept. of Education Cont'*

- ▶ “Although the right is important, it is not absolute; it ‘must be balanced against other important interests’ and ‘may be outweighed by supervening public concerns.’” (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4<sup>th</sup> 1.)



# *Love v. Dept. of Education Cont'*

- ▶ Right to attend school:
- ▶ “The legislature no doubt was of the opinion that the proper place to commence in the attempt to prevent the spread of contagion was among the young, where they were kept together in considerable numbers in the same room for long hours each day.”
- ▶ **“When we have determined that the act is within the police power of the state, nothing further need be said. The rest is to be left to the discretion of the law-making power. It is for that power to say whether vaccination shall be had as to all school children who have not been vaccinated all the time.”**  
(*Brown v. Smith, supra*, 235 Cal.Rptr.3d 218; *French v. Davidson, supra*, 143 Cal. 658.)

# *Love v. Dept. of Education Cont'*

- ▶ Free Exercise of Religion:
- ▶ Agreed with *Brown* court that SB 277 does not violate the right to free exercise of religion.



# *Jacobson v. Massachusetts* (1905)

197 U.S. 11

- ▶ The “**liberty** secured by the Constitution of the United States to every person within its jurisdiction **does not import an absolute right** in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold **restraints to which every person is necessarily subject for the common good**. On any other basis, organized society could not exist with safety to its members.”



DATA

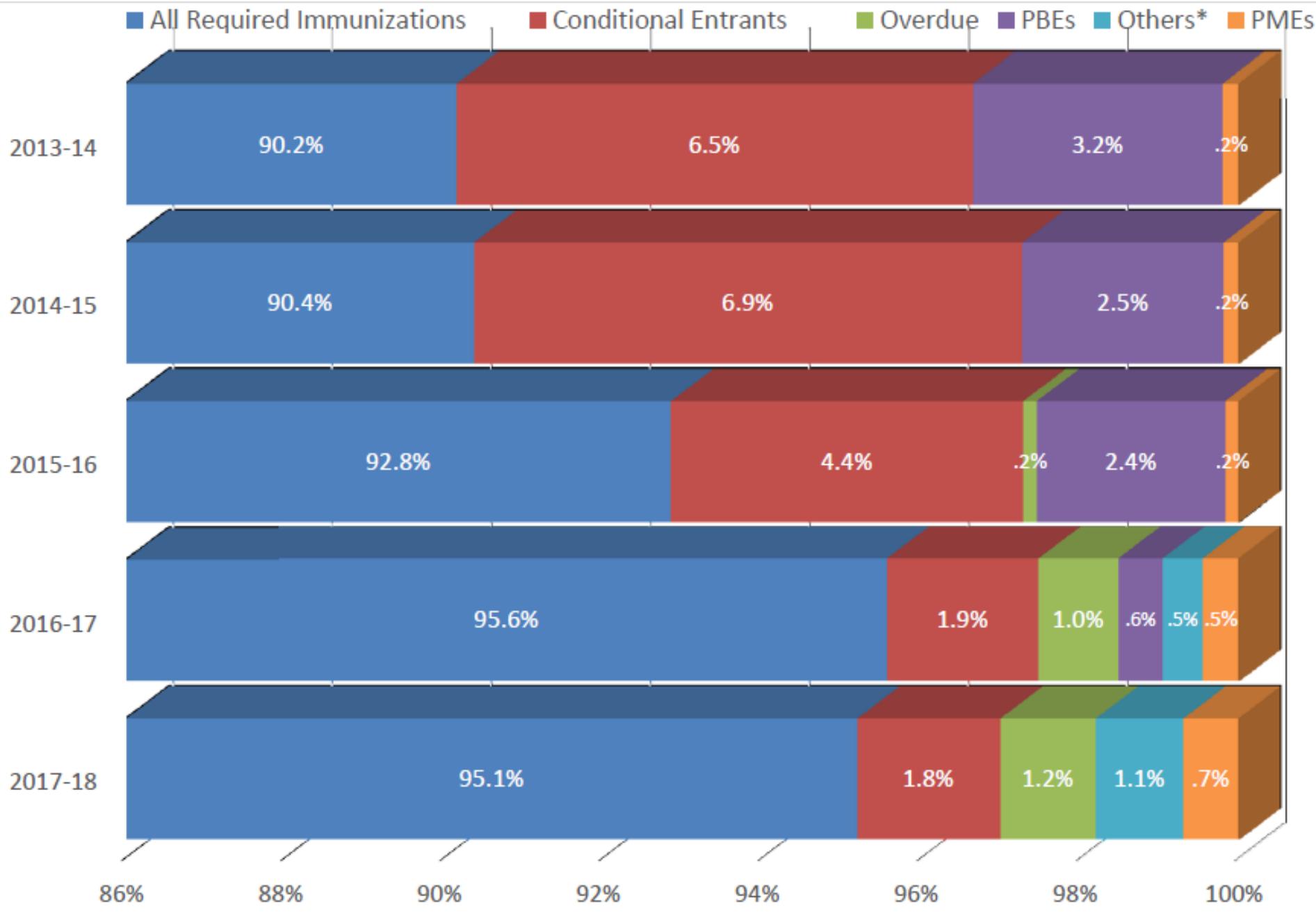


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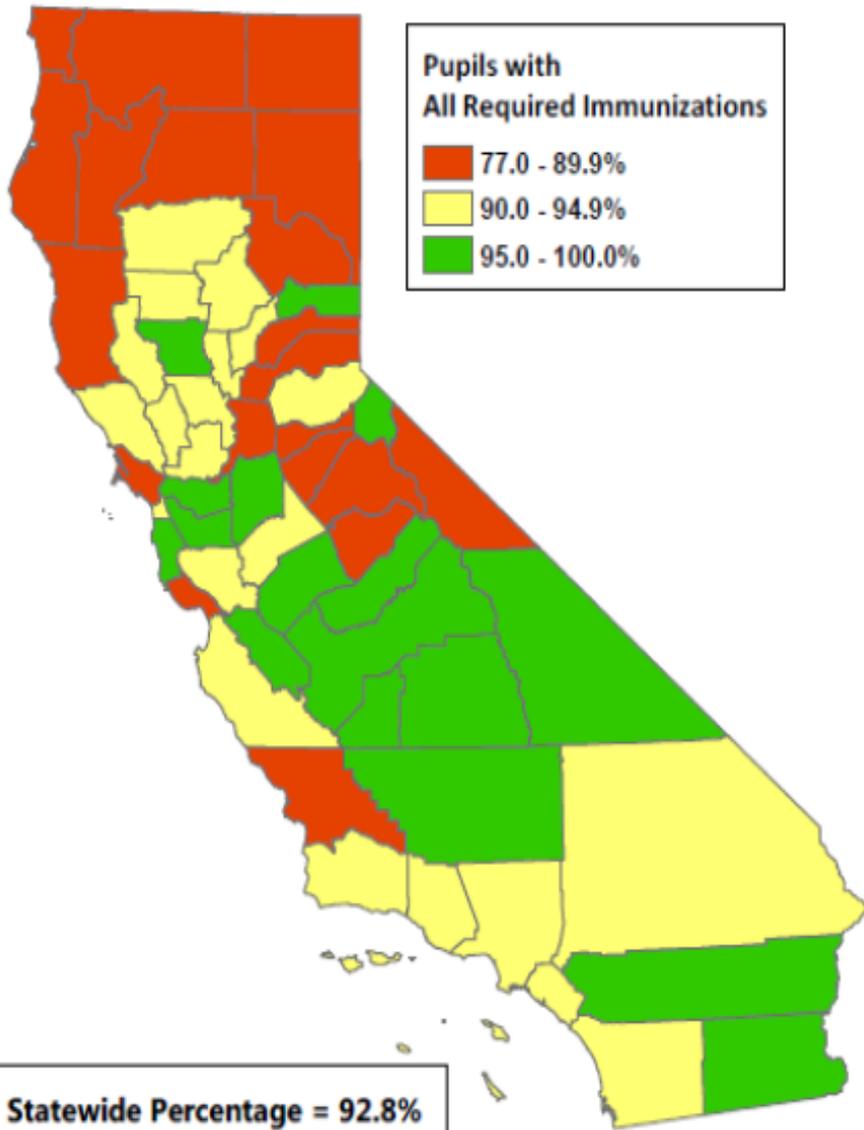
ACTION

# Current Immunization Status in California



\*Other children lacking required immunizations under criteria specified in SB 277.

2015-2016 School Year



2017-2018 School Year

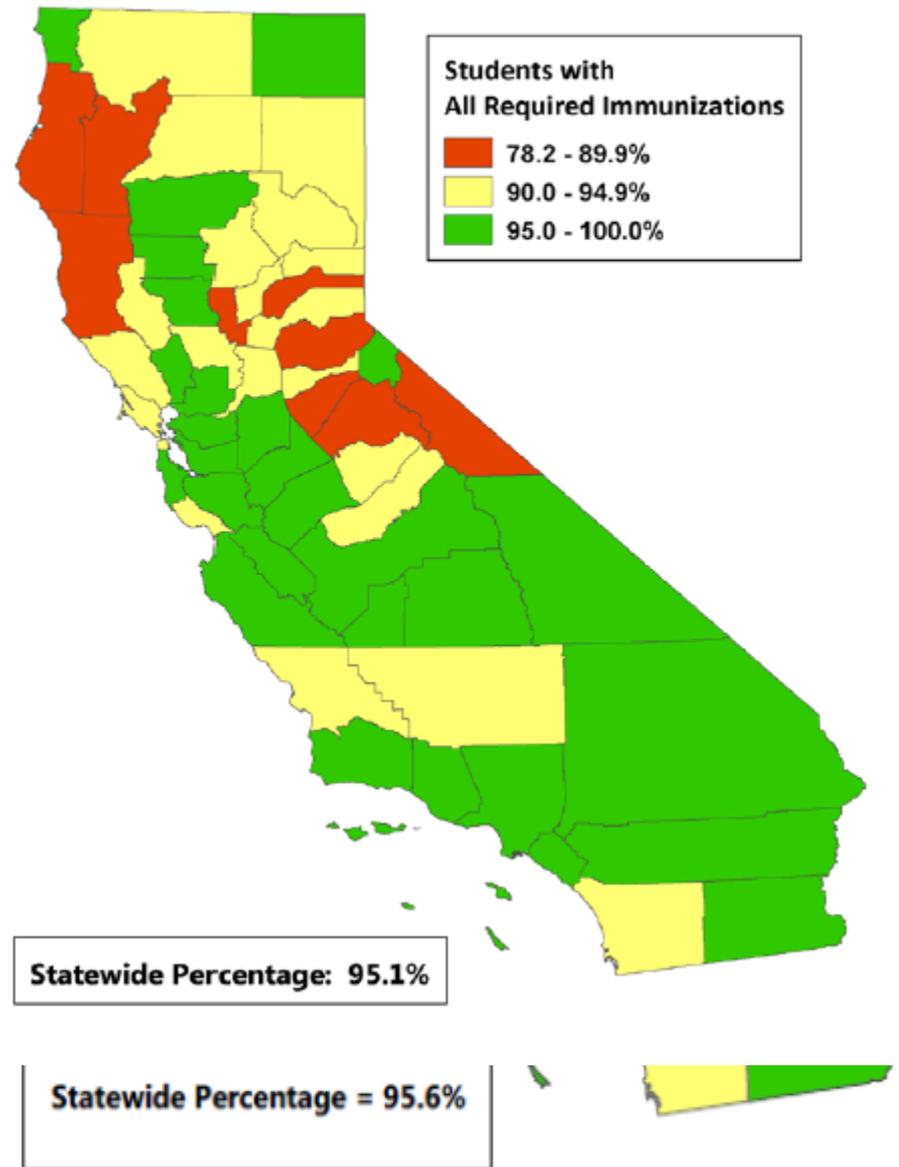
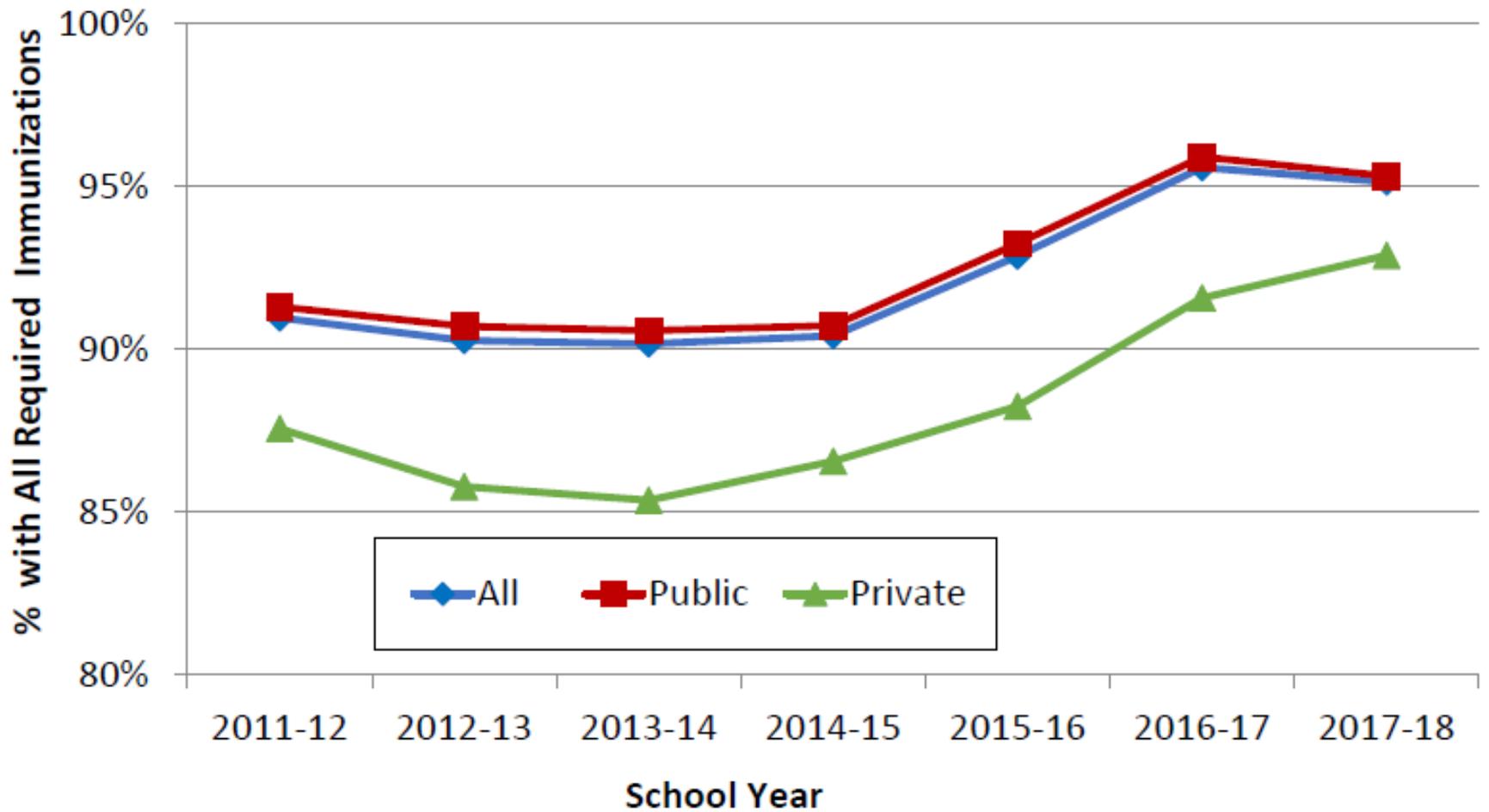
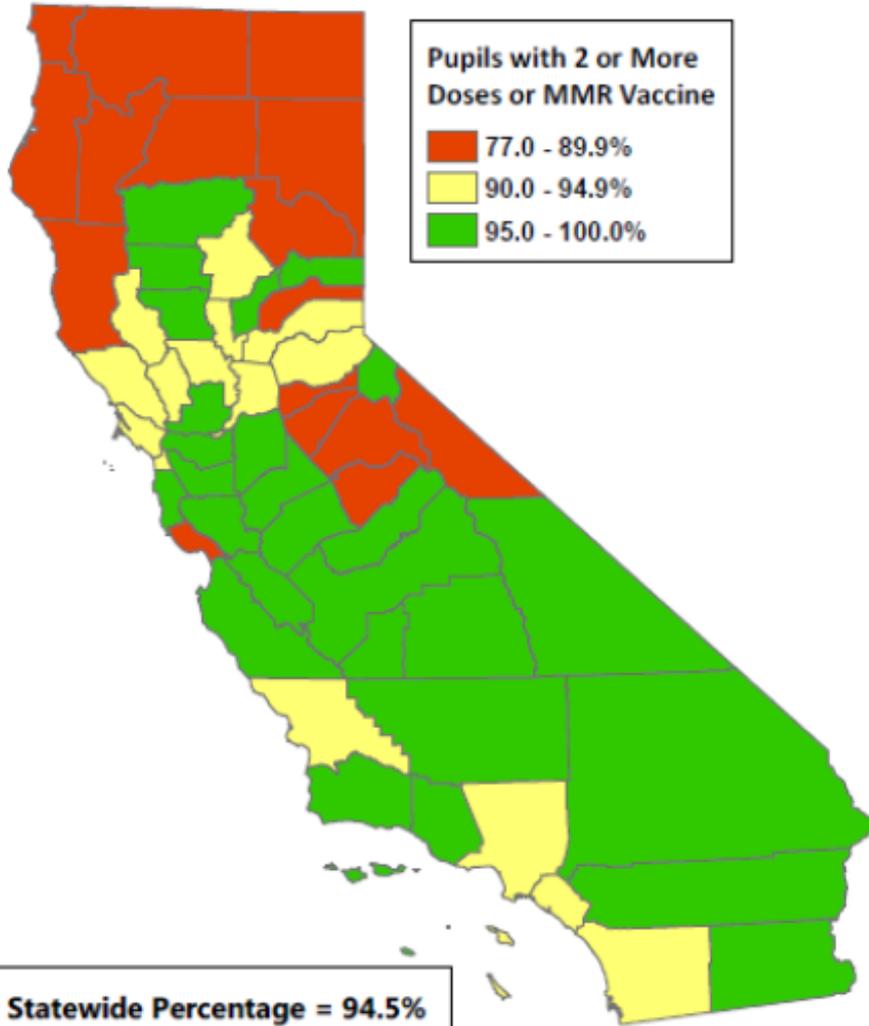


Figure 9. Kindergarten Students with All Required Immunizations, by County, 2015-2016 and 2016-2017 School Years



**Figure 1. Percentage of Kindergarten Students with All Required Immunizations, by School Type and School Year, 2011-2012 to 2017-2018**

2015-2016 School Year



2017-2018 School Year

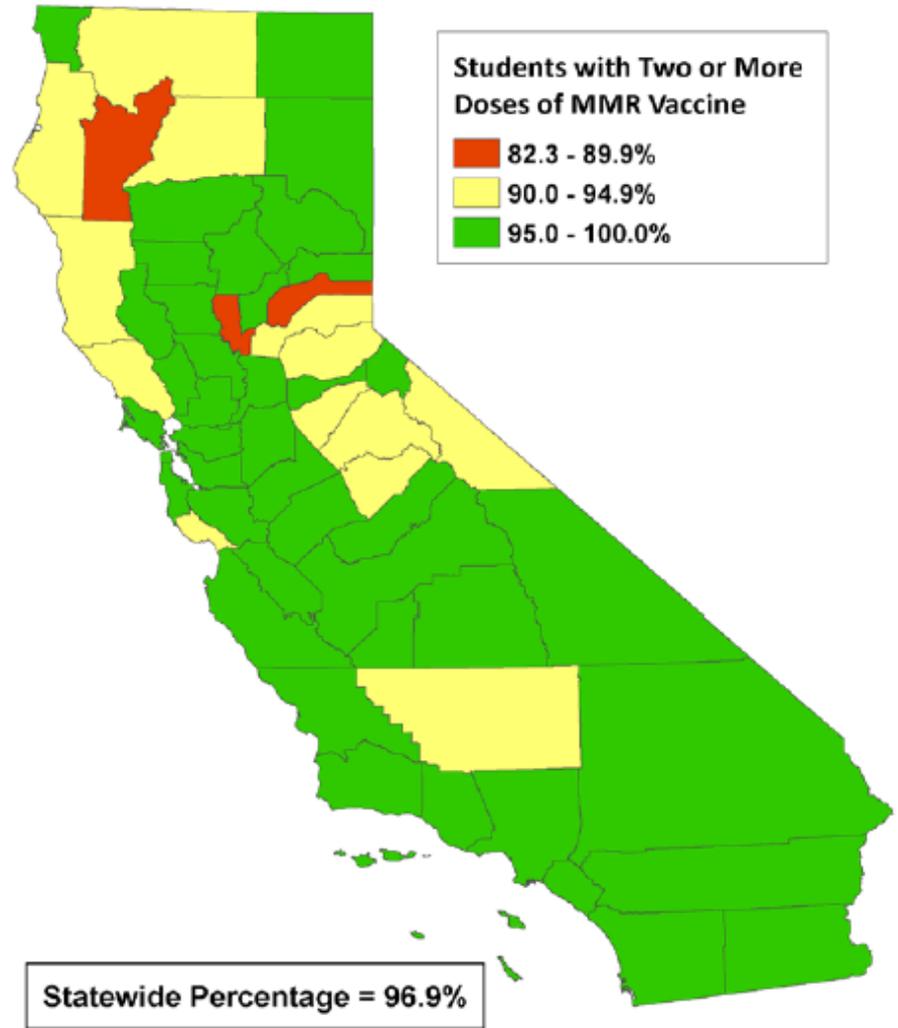
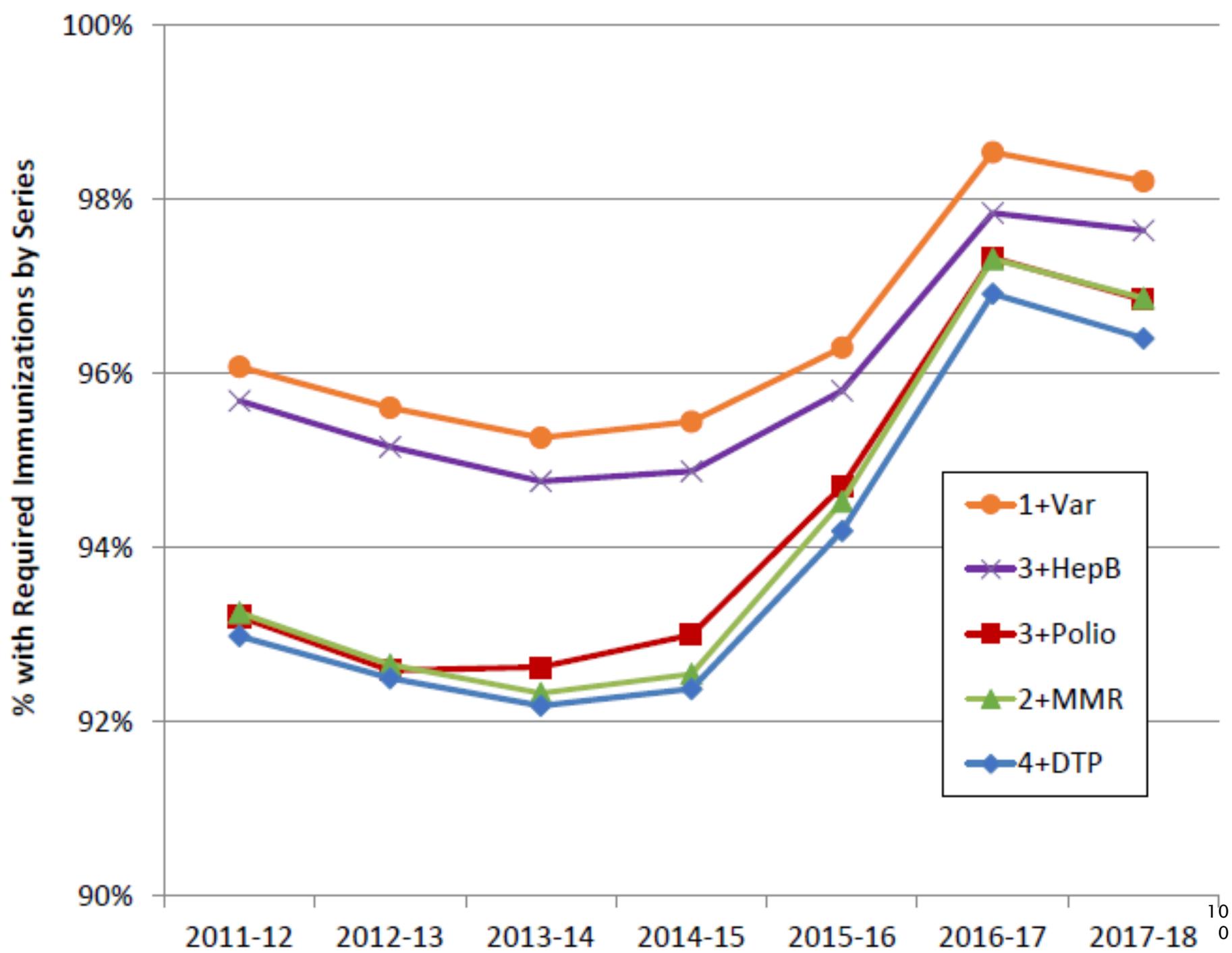


Figure 10. Kindergarten Students with 2 or More Doses of MMR Vaccine, by County, 2015-2016 and 2016-2017 School Years.



# Acknowledgements

- ▶ Robert Schechter, MD, MPH,  
CDPH Medical Officer,  
Center for Infectious Diseases



# Questions?

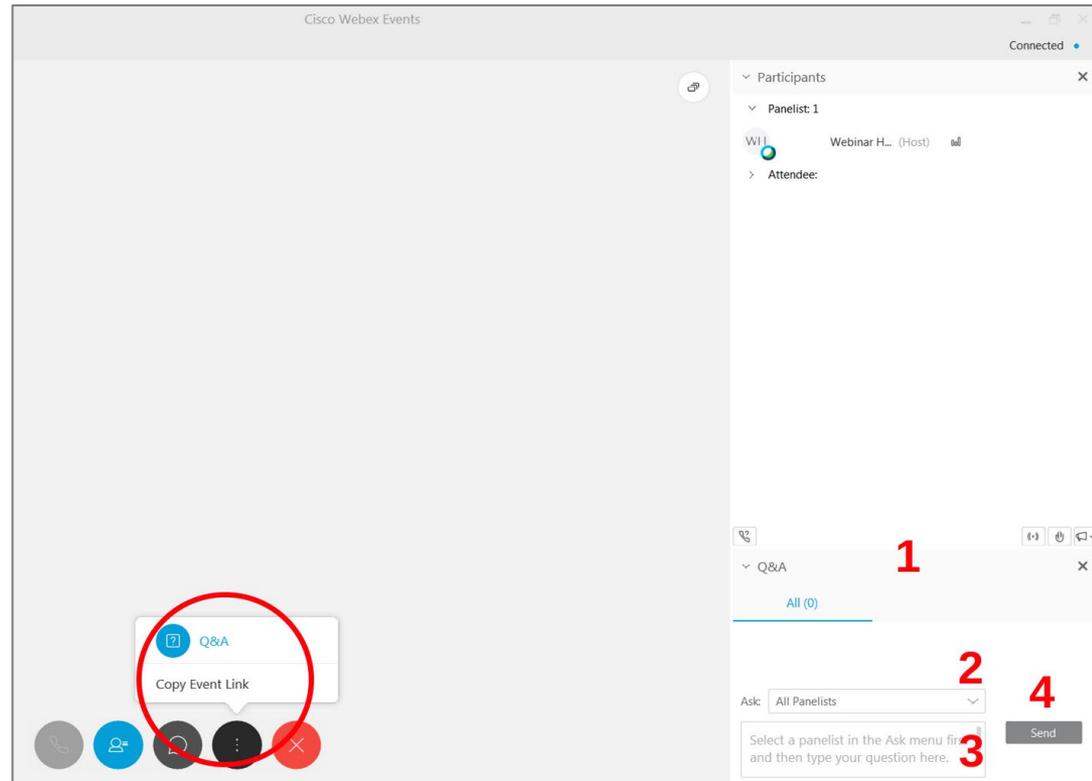
[www.shotsforschool.org](http://www.shotsforschool.org)

[nancy.barrera@cdph.ca.gov](mailto:nancy.barrera@cdph.ca.gov)

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Cross-Sector Data Collaborations**  
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