

# Varicella Outbreak in an Under-Vaccinated Private School in Asheville

Buncombe County Health and Human Services  
April 5, 2019



**BUNCOMBE COUNTY**  
HEALTH & HUMAN SERVICES

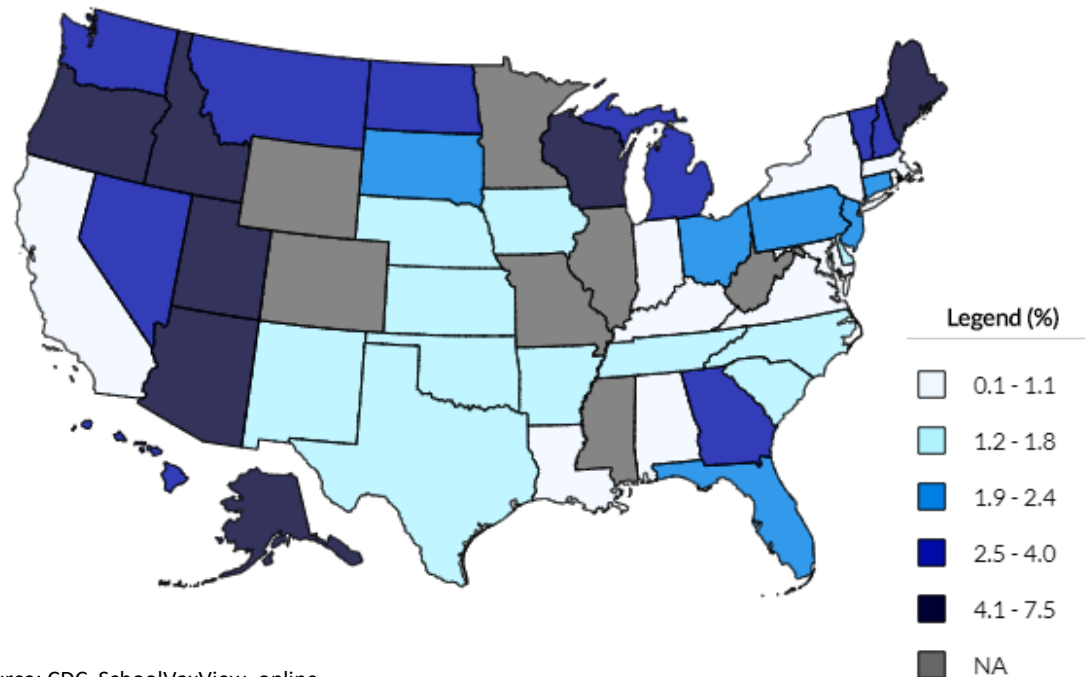
# Objectives

- Describe community context of Asheville varicella outbreak
- Review the outbreak investigation and response
- Discuss the challenges faced during outbreak
- Elicit feedback on our response
- Generate ideas on how to address those challenges more successfully next time  
*(because there will be a next time)*



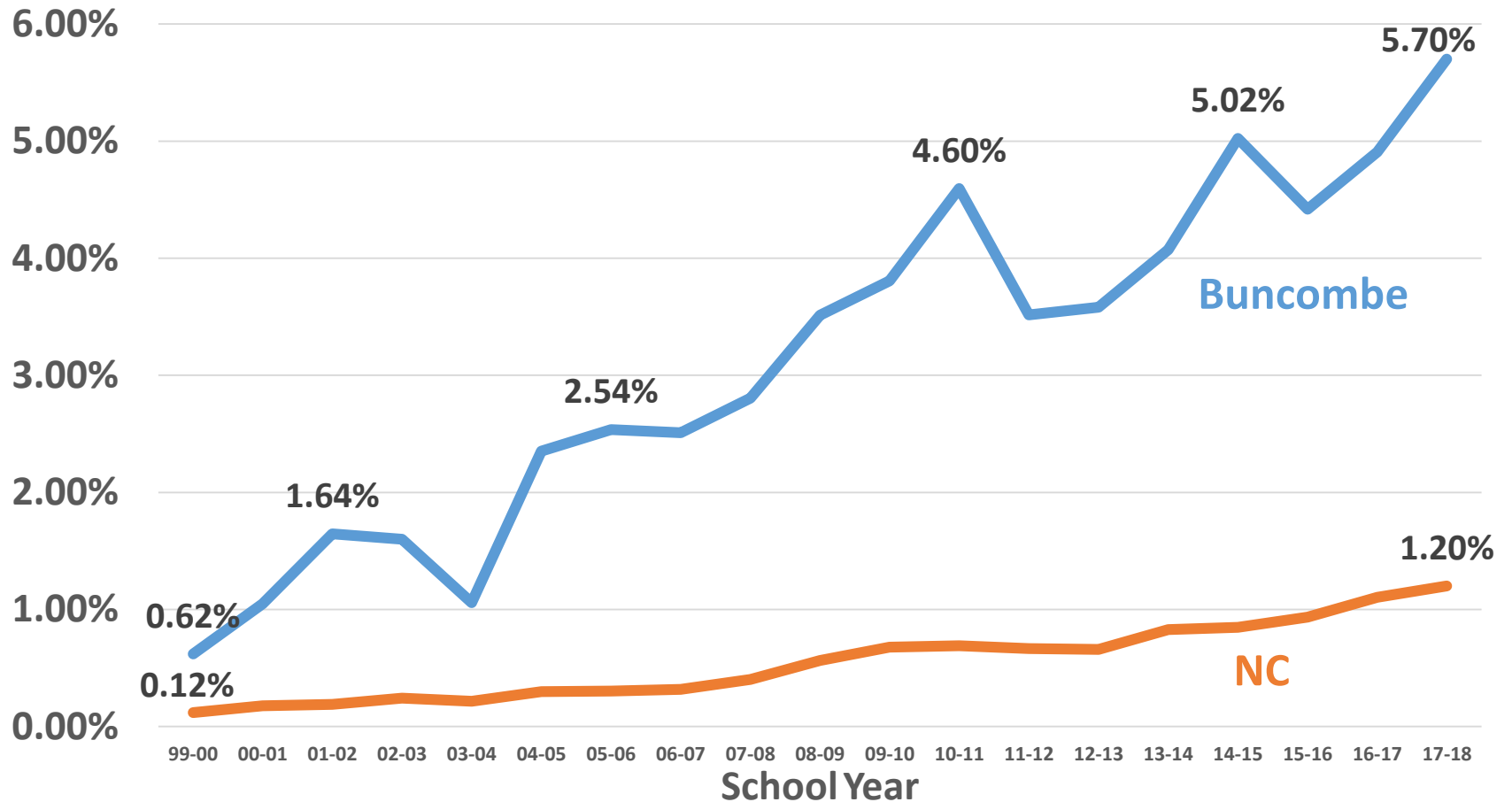
BCHHS Communicable Disease Nurses  
Mary Backlund and Sue Ellen Morrison

# % of Kindergarteners with Non-Medical Exemptions, 2017-18



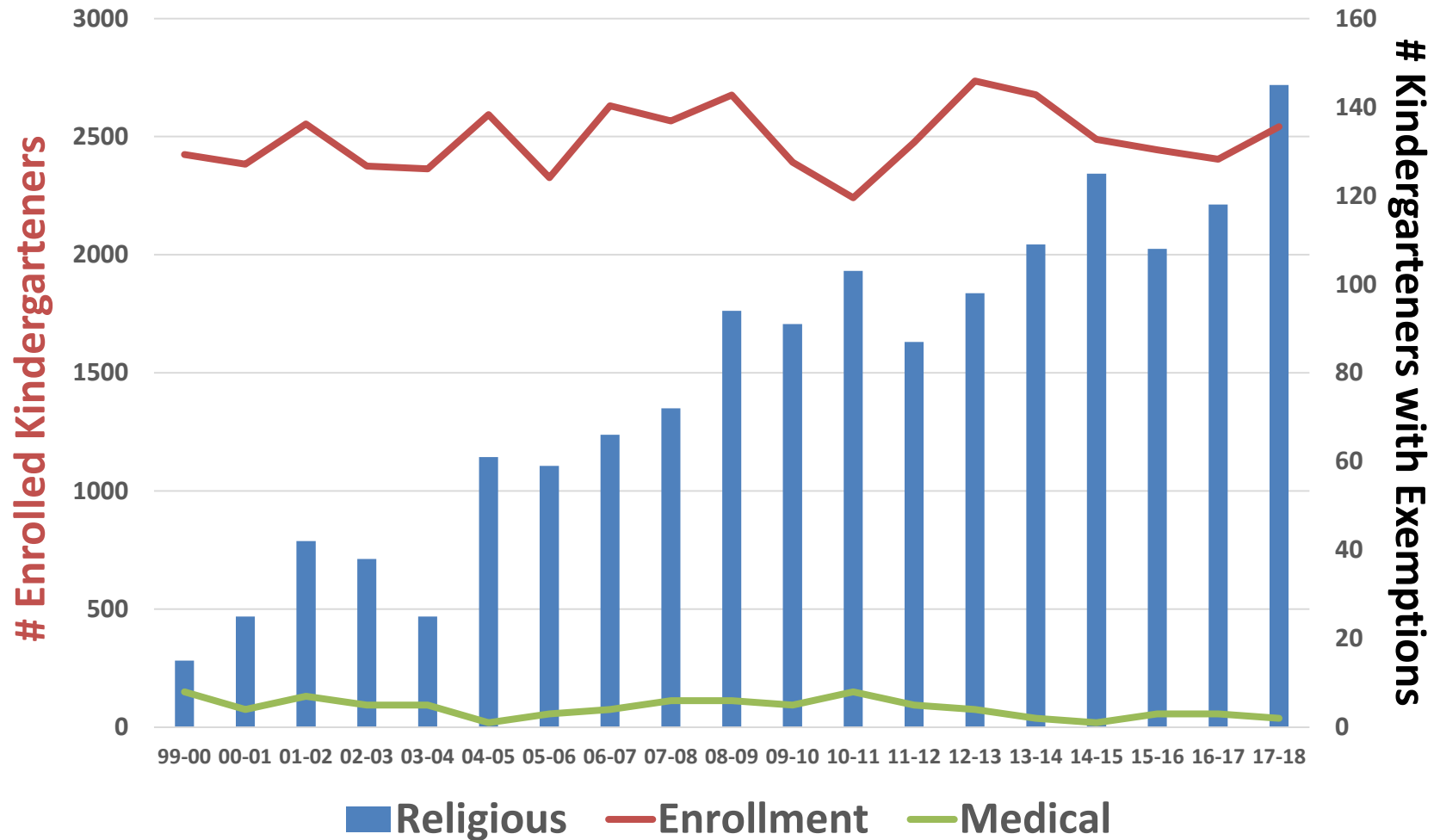
Source: CDC, SchoolVaxView, online

# % of Kindergarteners with Religious Exemptions, 1999-2017

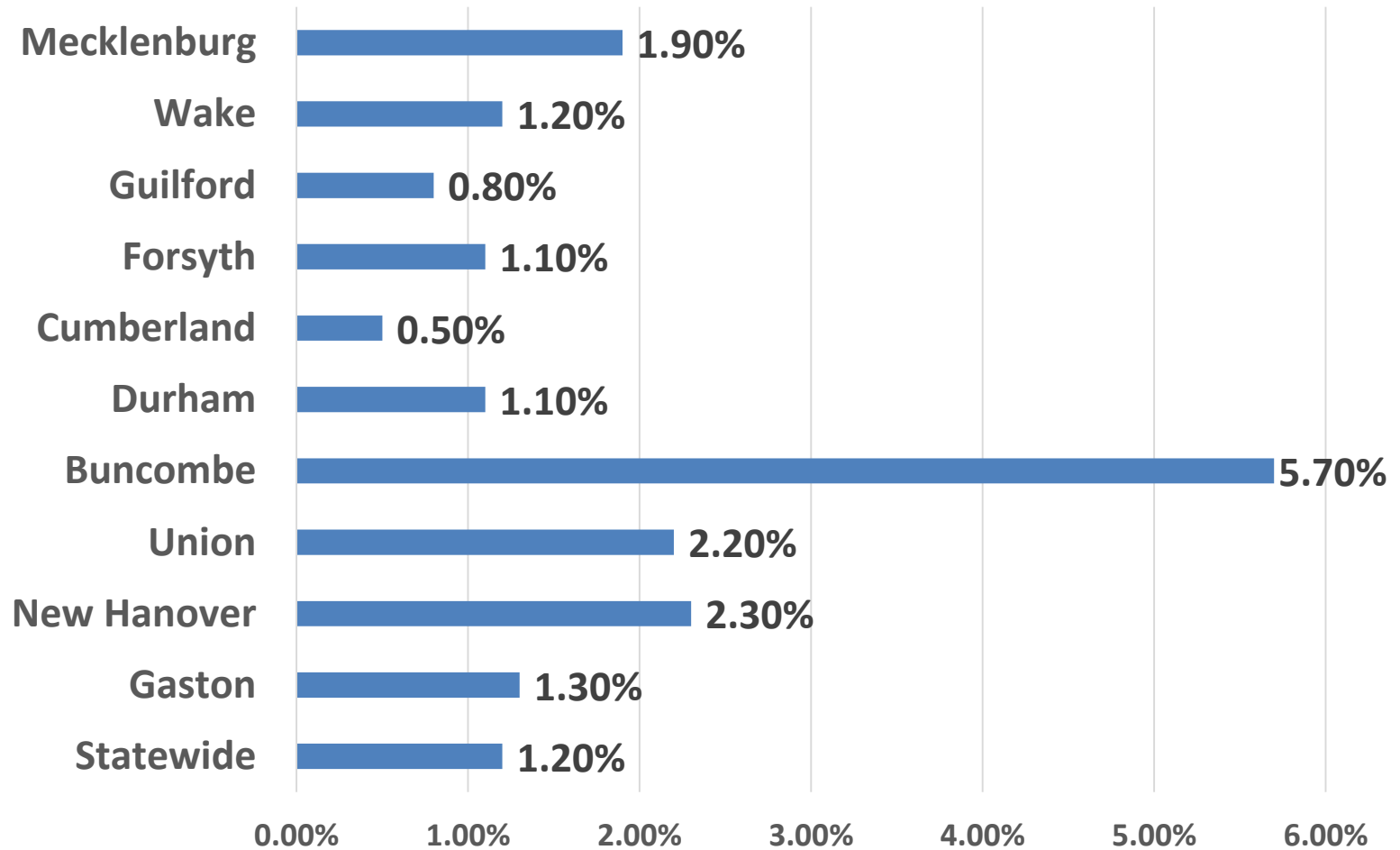


Source: NC DHHS, Immunization Branch

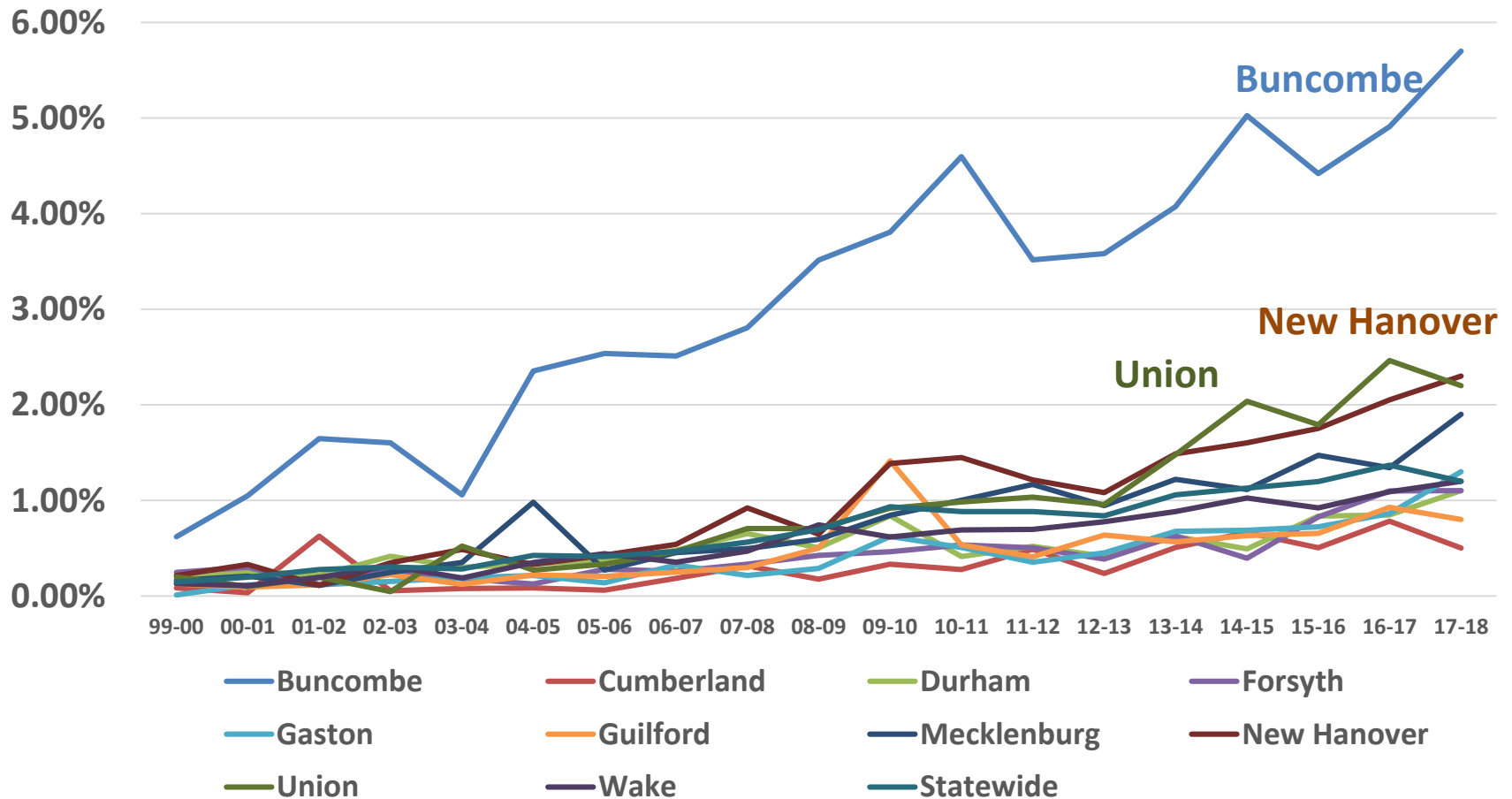
# # of Kindergarteners with Exemptions vs. Enrollment, Buncombe County, 1999-2017



# % of Kindergarteners with Religious Exemptions, Top 10 Urban Co. & NC, 2017-18



# % of Kindergarteners with Religious Exemptions, Top 10 Urban Counties & NC, 1999-2017



Source: NC DHHS, Immunization Branch

# In the beginning...

**Friday, 10/26/18 at 4:00 pm (of course!)**

- BCHHS CD staff receive call from a local childcare facility reporting a case of varicella in a child
- Call to parent reveals both siblings recently had chickenpox too
  - Siblings attend **Asheville Waldorf School (AWS)**
  - Parent states AWS had been informed of their illness

2017-18 School Year:

**68% Kindergarten Religious Exemption Rate**





# Varicella (chickenpox)



<http://www.vaccineinformation.org/photos/variaap001.jpg>

Copyright: American Academy of Pediatrics

Photo courtesy of CDC;

<https://www.cdc.gov/chickenpox/about/photos.html>

# Stumbling upon an outbreak...

Monday morning, 10/29/18

- CD nurse speaks to Front Office Coordinator at AWS
- Confirms a total of **12 cases since 9/12/18**
- Was not aware should report outbreak
- Student census = 152
- School included:
  - Nursery (ages 2 - 4 years)
  - Kindergarten (ages 3 ½ - 6)
  - Grades 1-6

# Pushback starts...

**Monday afternoon, 10/29/18**

- Front Office Coordinator hesitant to release personal information of students
  - “If it is something we are mandated by law then of course we will oblige. ... Can you please be more specific about what is legally mandated and what is not?”

**Reporting of Varicella**

# Hitting a wall...

Tuesday, 10/30/18

- CD staff responds to AWS regarding what they must share with LHD
- School's leadership team asks that all communication to/from school be handled by an attorney
  - Health Director notifies County Attorney
- BCHHS issues press release about outbreak
- Blast email sent to local medical providers alerting them to outbreak

**School is not named in communications**



# The waiting game...

Wednesday, 10/31/18

- Still no confirmation that BCHHS letter went to parents and staff
- Still waiting on list from school
- BCHHS provides interview with local TV – school still not named
- Afternoon conference call with AWS attorney
  - Now up to **27 cases** (5 currently ill)

**WHAT DO YOU DO NOW?**

# Threat of legal challenge to quarantine...

- “Quarantine is a huge **civil liberties** issue.”
- “Chickenpox is not a dangerous disease listed in statute.”
- “Chickenpox is ‘not the time’ to invoke quarantine.”

# Still waiting...

Thursday, 11/01/18

- Spoke with AWS attorney:
  - Outbreak level on both school campuses
  - BCHHS letter given to parents & staff today
  - Requested info would be given to us by end of the day
  - Discussion about how distribute quarantine orders



# Excerpts from AWS letter to parents 10/31/18

- “At Asheville Waldorf School, ***your privacy and rights as a parent are paramount.*** We have obtained legal advice regarding this request ... In accordance with the law, Asheville Waldorf School will provide the information as required.”
- “In the next several days, the Buncombe County Department of Health and Human Services will likely send letters to parents of unvaccinated children or children who have not shown documented proven immunity. In this letter, Buncombe County Department of Health and Human Services may state that children without known immunity ***must be quarantined to home for 21 days*** and may not attend Asheville Waldorf School during this time.”
- “We at Asheville Waldorf School recognize that ***the action of the Buncombe County Department of Health and Human Services is a grave concern*** for all of us.”



# We finally get what we want...

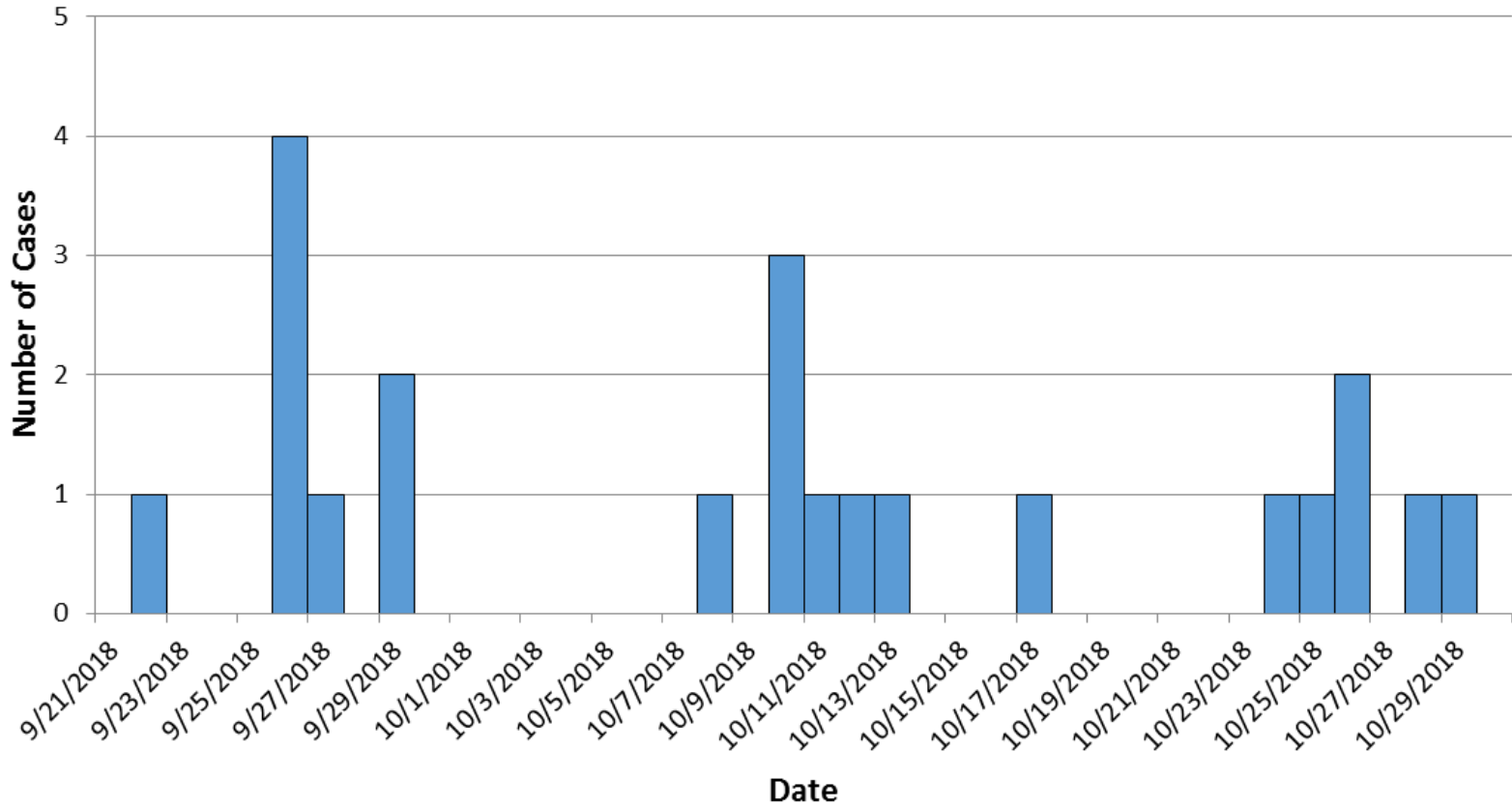
Thursday, 11/01/18 (at 4:30 pm, of course)

- **Religious exemptions to varicella vaccine = 109**
- **Medical exemption to varicella vaccine = 1**

**110 out of 152 students = 72.4% of school had  
varicella exemption**

- CD staff start calling parents of students reported to have had varicella during outbreak
  - Determine date of onset, last day in school and complete CDC varicella outbreak forms

# Varicella School Outbreak Buncombe County, 2018



# Content of AWS Quarantine Order

- “North Carolina law (N.C. Gen. Stat. §§ 130A-2, 130A-144, & 130A-145) and North Carolina Administrative Code (10A NCAC 41A .0201) allow local health officers (or designees) to prohibit students who are not immune to varicella from attending school **or activities outside their home** in the setting of an outbreak of varicella. **The intent of this quarantine is to decrease the risk of transmission of the illness and protect the health of non-immune students, staff and community members.** You may petition the Superior Court for review of the restriction of your child’s freedom of movement contained in this quarantine order pursuant to G.S. 130A-145(d).”

# Content of AWS Quarantine Orders

## Alternatives to exclusion from school and activities outside the home:

- Your child can return to school immediately after they receive a dose of the varicella immunization.
- Your child can return to school if blood tests indicate they have immunity to varicella.
- Your child can return to school if they have a signed note from a healthcare provider (physician, nurse practitioner or physician assistant) verifying that they have a history of typical chickenpox illness.

# Distribution of Quarantine Orders...

Friday morning, 11/02/18

- **104 quarantine orders** delivered to AWS attorney's office
  - 81 for students with religious exemptions
  - 23 for students who were reported to have had varicella but lacked any or adequate proof of immunity
    - **Some parents provided documentation from chiropractors**
      - Not considered valid documentation (10A NCAC 41A.0401)
      - Must be signed by a physician, NP or PA

# More delay and more concerns...

Friday, 11/02/18

- Requested confirmation that all AWS faculty/staff born after 1980
  - Story changes
  - AWS attorney out of town for deposition and says he can't follow-up until PM
- AWS attorney reports rumors about county issuing criminal charges or filing DSS reports
- Attorney shares that he will be appealing QO for his family
  - We request representative from state CD Branch as expert witness

# Concerns about quarantine orders...

Monday, 11/05/18

- We again ask for staff info and to be informed of any new cases
  - AWS attorney: **“school has no statutory authority to report chickenpox as the list of reportable disease does not include varicella”**
- AWS attorney has concerns about including 3 nursery classes without cases “or exposure” in QO
  - **We explained that unable to satisfy the conditions of investigation to lift QOs**
- School releases statement to media, naming themselves
- Attorney files Motion and Notice of Hearing

# Motion Dismissed on Procedural Grounds the day after Filed

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

MINOR CHILDREN 1-55,

Petitioners,

vs.

BUNCOMBE COUNTY HEALTH AND  
HUMAN SERVICES,

Respondent.

FILED

2018 NOV -5 1 P 4:06

BUNCOMBE CO., C.S.C.

BY \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NO. 18CV 04956

**MOTION TO REVIEW BUNCOMBE  
COUNTY HEALTH AND HUMAN  
SERVICES QUARANTINE**

COMES NOW the Petitioners, Minor Children 1-55, by and through the undersigned counsel, pursuant to North Carolina General Statute Section 130A-145(d) and moves this court to review the Quarantine Order issued by the Respondent against the petitioners. In support thereof, the petitioners show the Court the following:



# The outbreak continues...

Wednesday, 11/07/18

- Change in representation of school
  - Back to communicating with Front Office
- 3 new cases reported
- We (again) requested:
  - Immunity information on faculty/staff
  - To speak to faculty/staff
  - Site visit

# Monitoring the outbreak from afar...

Thursday, 11/08/18

- School faculty/staff declined allowing CD staff to do walk-through or speak to them
- Received incomplete list of faculty/staff and proof of immunity
- 2<sup>nd</sup> Notice of Hearing filed

# Second Challenge also Dismissed on Procedural Grounds

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

BUNCOMBE COUNTY

2018 NOV -8 P 2:41

SUPERIOR COURT DIVISION

FILE NO. 18CV 04998

GUARDIANS OF MINOR CHILDREN )

BUNCOMBE CO., C.S.C.

1-55, )

Petitioners, )

BY \_\_\_\_\_ )



SPECIAL PROCEEDING

vs. )

JAN SHEPARD, BUNCOMBE )  
COUNTY HEALTH DIRECTOR, )

Respondent. )

Pursuant to N.C.G.S. §130-145(d), the petitioners move the Court to review 112 quarantine orders served on minor children in Buncombe County on November 2, 2018. In support of this petition, the petitioner alleges:

1. The petitioners are the Guardians of healthy, school-aged children with valid religious exemptions to the chicken pox vaccine, all of whom attend school in Buncombe

# Second Challenge also Dismissed on Procedural Grounds

“In this state, a legal proceeding must be prosecuted by a legal person, whether it be a natural person, *sui juris*, or a group of individuals or other entity having the capacity to sue and be sued, such as a corporation, partnership, unincorporated association, or governmental body or agency. Even a class action must be prosecuted or defended by one or more named members of the class. G.S. 1A-1, Rule 23. **A legal proceeding prosecuted by an aggregation of anonymous individuals, known only to their counsel, is a phenomenon unknown to the law of this jurisdiction.**”

In re Coleman, 11 N.C. App. 124, 127, 180 S.E.2d 439, 442 (1971) (Emphasis Added).

# Third Challenge Filed

STATE OF NORTH CAROLINA

BUNCOMBE COUNTY

LAKOTA DENTON, AS GUARDIAN  
AD LITEM OF MINOR CHILDREN  
T.D. AND R.D.

Petitioners,

vs.

JAN SHEPPARD, BUNCOMBE  
COUNTY HEALTH DIRECTOR,  
Respondent.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE NO. \_\_\_\_\_

2018 NOV 14 P 2:31

18CV 05047

BUNCOMBE CO., C.S.C.

SPECIAL PROCEEDING

Pursuant to N.C.G.S. §130-145(d), the petitioners move the Court to review quarantine orders served on minor children T.D. and R.D. (“Minor children A and B”) in Buncombe County on November 2, 2018. In support of this petition, the petitioner alleges:

1. The petitioner is the guardian ad litem of two healthy, school-aged children with valid religious exemptions to the chicken pox vaccine, both of whom attend school in Buncombe County, North Carolina.

# Third Challenge Filed

WHEREFORE, Petitioner Guardian on behalf of minor children A and B had had their civil liberties harmed by the quarantine. Petitioners seek a review of the quarantine and ask the Court to remove the quarantine as applied to Minor Children A and B, and as a whole to all healthy children with valid religious chicken pox vaccine exemptions who received a quarantine order.

# And the ruling is...

Thursday, 11/15/18

- Hearing in Superior Court
  - Attorney represented 2 students at the school
- Judge concluded LHD had authority to issue quarantine orders
- Upheld quarantine from school, but struck down quarantine from outside activities
  - Exceeded CDC guidance which we referenced
  - Overly broad and not the least restrictive
    - Needs to be “more narrowly tailored”

# Intense media interest

Monday, 11/19 – Tuesday, 11/20/18



Health » Food | Fitness | Wellness | Parenting | Live Longer

Live TV

U.S. Edition

## North Carolina chickenpox outbreak blamed on vaccination exemptions



By **Susan Scutti**, CNN

🕒 Updated 6:12 AM ET, Tue November 20, 2018

*exemptions*



**What does the public need to know?**



# The end of the outbreak...

- Quarantine ended 11/20, during Thanksgiving break
- Outbreak at school ended 12/21
  - No new cases after quarantine ended
- Outbreak at community level ended 1/4/2019
- 41 total cases
  - 38 at school
  - 2 hospitalizations

# Challenges for Investigation & Response

- Lack of prompt reporting of cases/outbreak by school
  - Varicella not a reportable disease
- Lack of school principal/director and school nurse
- Inability to speak to staff or visit school
- Delayed school response to requests
- Communication through attorney

# Challenges to Ending Outbreak

- Parental beliefs about risks of varicella infection vs vaccination
- Distrust of government
- Intense media interest
- Large unimmunized population in community
- Court proceedings

# Lessons Learned

- Reach out to all schools in community prior to outbreak
- Be clear & specific about what you need & when you need it
- Naming school helps protect public's health
- Have your key talking points drafted and stick to them
- CDC guidance was never intended to replace or limit LHD quarantine authority, or be prescriptive for every situation.

# Shield of Protection Immunization Coalition

**Goal: Increase Immunization Uptake in Western North Carolina**

