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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GROSSMONT UNION HIGH SCHOOL  
DISTRICT,

Plaintiff and Respondent,

v.

DIEGO PLUS EDUCATION  
CORPORATION,

Defendant and Appellant;

WESTERN EDUCATIONAL  
CORPORATION et al.,

Real Parties in Interest and  
Appellants;

SAN DIEGO UNIFIED SCHOOL  
DISTRICT,

Intervener and Respondent.

D076221

(Super. Ct. No. 37-2015-  
00033720-CU-WM-CTL)

APPEALS from post-judgment orders of the Superior Court of San Diego County, David J. Danielsen, Judge. (Retired Judge of the San Diego

Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Reversed.

Horvitz & Levy, Christopher D. Hu, Barry R. Levy; Blank Rome, Gregory M. Bordo and Christopher J. Petersen for Defendant, Appellants, and Real Parties in Interest.

Dannis Woliver Kelley, Sarah L.W. Sutherland and Keith A. Yeomans for Plaintiff and Respondent.

San Diego Unified School District, Andra M. Greene for Intervener and Respondent.

This appeal concerns a long running controversy involving public charter schools that operate within the geographical boundaries of Grossmont Union High School District (Grossmont Union) and San Diego Unified School District (SDUSD) but exist pursuant to charters approved by smaller school districts. Although the question that we resolve in this opinion plays out in the context of an extended and complex policy dispute about the proper role of charter schools in the fabric of California’s public education system, the issue that we address is procedural and limited, as it depends on whether the trial court improperly exceeded the scope of its previous judgments when it reopened the litigation to afford additional relief.

Specifically, Diego Plus Education Corporation (Diego Plus), Western Educational Corporation (Western Educational), Lifelong Learning Administration Corporation, and Educational Advancement Corporation (collectively, “the Charter School Corporate Entities”) appeal from orders granted by the trial court in 2019 in favor of Grossmont Union and SDUSD. The orders (1) enjoin the Charter School Corporate Entities from operating *any* charter school within the geographical boundaries of Grossmont Union

and SDUSD, and (2) order the issuance of writs of mandate requiring that Julian Union Elementary School District (Julian Union) revoke the charter of Diego Valley East Public Charter School and that Dehesa Elementary School District (Dehesa) revoke the charter of Diego Hills Central Public Charter School.

Judgments in favor of Grossmont Union and SDUSD in this action were originally entered in 2017 (the 2017 judgments) and were based on a determination that two charter schools operated by Diego Plus, namely Diego Valley Public Charter and Diego Hills Public Charter School, were improperly operating resource centers outside the geographical boundaries of the school districts that approved their charters in violation of certain provisions of the Charter Schools Act (Ed. Code, § 47600 et seq.).<sup>1</sup> The judgments stated that Grossmont Union was entitled to a writ of mandate compelling Julian Union to revoke the charter of Diego Valley Public Charter and that SDUSD was entitled to a writ of mandate compelling Dehesa to revoke the charter of Diego Hills Public Charter School.

Because the State Board of Education granted a waiver to give Julian Union and Dehesa until June 30, 2018, to comply with the portions of the Education Code at issue in the litigation, the trial court stayed the writ of mandate during the waiver period. Specifically, the 2017 judgments stated that the issuance of the writs of mandate was stayed and that the writs would issue *only if* Diego Valley Public Charter and Diego Hills Public Charter School continued to operate resource centers in violation of the Charter Schools Act upon the expiration of the waiver on June 30, 2018.

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Education Code.

The orders that we consider in this appeal were issued in 2019 after Diego Plus closed both Diego Valley Public Charter and Diego Hills Public Charter School and obtained approval from the chartering school districts for new charter schools, namely Diego Valley East Public Charter School and Diego Hills Central Public Charter School. Those two new charter schools operated in out-of-district facilities that were formerly used by Diego Valley Public Charter and Diego Hills Public Charter School. In addition, after the 2017 judgments were issued, another of the Charter School Corporate Entities—Western Educational—expanded a pre-existing charter school approved by Borrego Springs Unified School District (San Diego Workforce Innovation High School) to include resource centers in some of the out-of-district facilities formerly used by Diego Valley Public Charter and Diego Hills Public Charter School. Western Educational was not a party to the 2017 judgments.

Grossmont Union and SDUSD took the position that the operation of the new charter schools by Diego Plus and the expansion of the pre-existing charter school by Western Educational triggered the conditions for lifting the stay implemented by the 2017 judgments. They accordingly filed the motions at issue in this appeal and obtained relief from the trial court. Specifically, the trial court granted motions by Grossmont Union and SDUSD to (1) lift the stays of the writs of mandate ordered in the 2017 judgments; (2) amend the 2017 judgments to mandate that Julian Union and Dehesa revoke the charter of the *newly approved* charter schools; and (3) issue an injunction permanently enjoining the Charter School Corporate Entities from operating any school in the geographical boundaries of Grossmont Union and SDUSD, which would effectively prevent Western Educational from operating at the facilities it added to its pre-existing charter school.

As we will explain, we conclude that the trial court improperly lifted the stays of the 2017 judgments because the conditions to lift the stays and issue writs of mandate were not triggered. Moreover, the permanent injunction issued by the trial court was improper because it exceeded the scope of the trial court’s authority to issue orders to enforce the writs of mandate ordered in the 2017 judgments. We accordingly reverse the trial court’s orders.

## I.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *Applicable Statutory Framework*

To explain the issues presented in this litigation, we first review the statutory framework governing the establishment of public charter schools. In *California School Bds. Assn. v. State Bd. of Education* (2010) 186 Cal.App.4th 1298 (*CSBA*), our colleagues in the First District provided a useful summary of the relevant statutory framework, which we turn to here as the starting point for our discussion.<sup>2</sup>

“In 1992 the Legislature enacted a statutory scheme to allow the establishment and operation of charter schools. (§ 47600 et seq.) The intent was to provide opportunities for teachers, parents, and students to establish schools that operate independently from the school district in order to improve learning; create learning opportunities, especially for those who are academically low-achieving; encourage innovative teaching methods; create new opportunities for teachers; provide parents and students expanded choices in the types of educational opportunities available; hold the charter

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<sup>2</sup> Because of amendments to the Charter Schools Act, some of the relevant statutory citations have changed in the intervening decade since *CSBA, supra*, 186 Cal.App.4th 1298 was issued. We update those statutory citations by use of bracketed text.

schools accountable for meeting quantifiable outcomes; and provide ‘vigorous competition within the public school system to stimulate continual improvements in all public schools.’ (§ 47601.)” (*CSBA, supra*, 186 Cal.App.4th at p. 1306.)

“A charter school is established by submitting to the governing board of a school district a petition signed by a number of parents equal to at least half of the proposed enrollment, or signed by a number of teachers equal to at least half the number of teachers anticipated at the school. (§ 47605, subd. (a)(1).) The petition must contain a ‘reasonably comprehensive’ description of numerous pedagogical, administrative, and financial components; and myriad other provisions demonstrating adequate plans for good governance, proper testing, an appropriate disciplinary system, financial reporting, and regular consultations with parents. (*Id.*, subd. [(c)(5)(A)-(O)].)” (*CSBA, supra*, 186 Cal.App.4th at pp. 1306-1307.)

“After a public hearing (§ 47605, subd. (b)), the district’s board decides whether to grant or deny the petition, ‘guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged.’ A district board’s discretion to deny a charter petition is limited. The statute provides that a school district ‘*shall* grant a charter . . . if it is satisfied that granting the charter is consistent with sound educational practice.’ (*Ibid.*, italics added.) Similarly, the district board can deny the petition only if it makes ‘written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings: [¶] (1) The charter school presents an unsound educational program. . . . [¶] (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition. [¶] (3) The

petition does not contain the number of signatures required. . . . [¶] (4) The petition does not contain an affirmation [that the school will be tuition-free, nonsectarian, and nondiscriminatory]. [¶] (5) The petition does not contain reasonably comprehensive descriptions of [each of the statutorily required components].’ (*Ibid.*)” (*CSBA, supra*, 186 Cal.App.4th at p. 1307.)

“In 2002 the Legislature amended the [Charter Schools Act]. Significant among the amendments was the addition of stringent geographical restrictions for the operation of charter schools. (See §§ 47605, subd. (a)(1), 47605.1; Stats. 2002, ch. 1058, §§ 6, 7.) . . . [¶] The 2002 amendments provided that, from and after July 1, 2002, a school chartered by a district must identify a ‘single charter school that will operate within the geographic boundaries of that school district.’ (§§ 47605, subd. (a)(1), 47605.1, subd. (a)(1).) The school may operate at multiple sites within the district so long as each location is identified in the petition. (§ 47605, subd. (a)(1).)” (*CSBA, supra*, 186 Cal.App.4th at pp. 1307-1308.)

During the period when this case was litigated, the Charter Schools Act set forth several exceptions to the general rule that a charter school must locate within the geographical boundaries of the school district that approves its charter. Two exceptions are relevant here.

First, “a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district in which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist: [¶] (1) The charter school has attempted to locate a

single site or facility to house the entire program, but such a facility or site is unavailable in the area in which the charter school chooses to locate.

[¶] (2) The site is needed for temporary use during a construction or expansion project.” (Former § 47605.1, subd. (d); Stats. 2016, ch. 186, § 46.)

We will refer to this provision as “the Unable-to-Locate exception.”<sup>3</sup>

Second, the geographical limitations “do not apply to a charter school that provides instruction exclusively in partnership with” the federal Workforce Innovation and Opportunity Act (29 U.S.C. § 3101 et seq.) or certain other federal and state programs that are not relevant here. (Former § 47605.1, subd. (g), now codified as § 47605.1, subd. (f).) We will refer to this provision as “the WIOA exception.”

B. *Grossmont Union and SDUSD File Litigation Challenging the Operation of Diego Valley Public Charter and Diego Hills Public Charter School Outside the Boundaries of the School Districts That Approved the Schools’ Charters*

On October 6, 2015, Grossmont Union filed a petition for writ of mandate and complaint for injunctive and declaratory relief against several

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<sup>3</sup> Effective January 2020, section 47605.1 was amended to eliminate the Unable-to-Locate exception. (Stats. 2019, ch. 487, § 2.) The Charter Schools Act currently provides, “A charter school that established one site outside the boundaries of the school district, but within the county in which that school district is located before January 1, 2020, may continue to operate that site until the charter school submits a request for the renewal of its charter petition. To continue operating the site, the charter school shall do either of the following: [¶] (i) First, before submitting the request for the renewal of the charter petition, obtain approval in writing from the school district where the site is operating. [¶] (ii) Submit a request for the renewal of the charter petition pursuant to Section 47607 to the school district in which the charter school is located.” (§ 47605, subd. (a)(5)(A).) We express no view on how this provision applies to the charter schools at issue in this litigation.



entities, including Julian Union and Diego Plus.<sup>4</sup> Grossmont Union filed an amended petition and complaint on May 20, 2016. As relevant here, that pleading added Dehesa as a defendant and respondent. Grossmont Union alleged that Diego Plus violated the Charter Schools Act by operating Diego Valley Public Charter and Diego Hills Public Charter School within Grossmont Union’s geographical boundaries. Grossmont Union sought a writ of mandate and declaratory and injunctive relief against Diego Plus and against the school districts that approved the schools’ charter petitions, namely, Julian Union and Dehesa.

SDUSD filed a complaint in intervention in the litigation initiated by Grossmont Union. SDUSD’s first amended petition for a writ of mandate and complaint named Diego Hills Public Charter School and Dehesa as defendants and respondents.<sup>5</sup> SDUSD sought a writ of mandate and declaratory and injunctive relief against Diego Hills Public Charter School and Dehesa based on the fact that Diego Hills Public Charter School operated facilities within the geographical boundaries of SDUSD, allegedly in violation of the Charter Schools Act.

Diego Valley Public Charter—a target of Grossmont Union’s challenge—was a public charter school operated by Diego Plus.<sup>6</sup> The school’s

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<sup>4</sup> The other entities sued by Grossmont Union were connected to charter schools that are not at issue in this appeal. Other than Diego Plus, none of the other Charter School Corporate Entities were named as defendants and respondents by Grossmont Union or, later, by SDUSD.

<sup>5</sup> In contrast to Grossmont Union, SDUSD did not name Diego Plus as a defendant, respondent, or real party in interest.

<sup>6</sup> “A charter school may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit

charter was approved by Julian Union in 2011 for an initial five- year term and was renewed for another five-year term in 2016. Diego Valley Public Charter provided non-classroom-based independent study, and as of March 2017, it served approximately 686 students in grades eight through 12 throughout San Diego County. Diego Valley Public Charter did not require its students to attend any classroom or group instruction, but it required a weekly meeting with an assigned teacher and provided resource centers to augment and support the educational program. As described by the school’s principal, the resource centers had “a friendly business office appearance, with large open spaces where students can independently work and teacher work stations where students meet one-on-one with [teachers] for their weekly meetings.”<sup>7</sup> As of March 2017, Diego Valley Public Charter operated resource centers in Julian, El Cajon, Lakeside, Vista, and Escondido. The El Cajon and Lakeside resource center locations were within the geographical boundaries of Grossmont Union.

Diego Hills Public Charter School—a target of both Grossmont Union’s and SDUSD’s challenge—was also operated by Diego Plus. The charter petition of Diego Hills Public Charter School was first approved by Dehesa in 2009, and like Diego Valley Public Charter, the school provided non-classroom-based independent study, supplemented by resource centers.

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Public Benefit Corporation Law.” (§ 47604, subd. (a).) Diego Plus is a nonprofit public benefit corporation that operates charter schools.

<sup>7</sup> As described in the record, the resource center for a non-classroom-based charter school may provide several different services, including counseling services, group instruction, tutoring, second language services, science “wet labs” consisting of sinks and science lab tables, and space for teachers and students to meet individually or in small groups to review homework and administer assessments.

Evidence in the record identifies several locations where Diego Hills Public Charter School operated resource centers, including a location in Lemon Grove, within Grossmont Union’s geographical boundaries, and a location in San Diego, within SDUSD’s geographical boundaries.

C. *The Third District Court of Appeal Issues Relevant Case Law*

When this litigation was first filed in 2015, there was no appellate court authority on the issue of whether a charter school that provides independent study programs through resource centers was permitted under the Charter Schools Act to locate resource centers outside the geographical boundaries of the school district that approved the school’s charter petition.<sup>8</sup> Therefore, Grossmont Union and SDUSD sought relief based on their interpretation of the statutory language of the Charter Schools Act. In October 2016, while this action was pending, the Third District issued *Anderson, supra*, 4 Cal.App.5th 262, establishing case law on the issue for the first time. Focusing on section 47605, subdivision (a)(1), which requires that a charter petition “ ‘identify a single charter school that will operate within the geographic boundaries of that school district,’ ” *Anderson* held that this geographical limitation applies to all charter schools, whether classroom-

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<sup>8</sup> As the trial court observed in this case, “Prior to the initiation of this action, there was a dispute between members of the education community as to whether the geographical limitations on charter[ ] schools set forth in the [Charter Schools Act] applied to resource centers operated by charter schools that provided non-classroom-based independent study education.” In one indication that the issue was not settled, in 2002 the State Department of Education issued a memorandum stating that “ ‘[t]he site restrictions do not apply to facilities used as resource centers, meeting spaces, or satellite sites used exclusively for non-classroom based independent study if a majority of the charter school pupils are residents of the county in which the charter is authorized.’ ” (*Anderson Union High School Dist. v. Shasta Secondary Home School* (2016) 4 Cal.App.5th 262, 280-281 (*Anderson*).)

based or non-classroom-based (including resource centers). (*Id.* at pp. 275-277, italics omitted.) As *Anderson* explained, even if the charter school operates through resource centers rather than classroom-based instruction, the school’s operations must be restricted to the boundaries of the chartering school district *unless* the school falls into one of the statutory exemptions that allow a charter school to operate outside the geographical boundaries of the chartering school district. (*Id.* at p. 283.) As we have explained, those exceptions included the Unable-to-Locate exception (former § 47605.1, subd. (d)) and the WIOA exception (§ 47605.1, subd. (f)).

D. *The Trial Court Enters Judgment in Favor of Grossmont Union and SDUSD on Their Petitions for Writ of Mandate, But Stays the Issuance of the Writs*

After *Anderson* was issued, the trial court proceeded by considering the issues presented in the litigation in a bifurcated manner, first deciding the merits of Grossmont Union’s request for a writ of mandate regarding Diego Valley Public Charter.<sup>9</sup>

On April 11, 2017, the trial court issued a statement of decision as to Diego Valley Public Charter. As the trial court explained, the parties did not dispute that, due to the *Anderson* decision, Diego Valley Public Charter was precluded from operating resource centers outside the geographical boundaries of Julian Union unless a statutory exception applied. Diego Valley Public Charter contended that it was covered by the WIOA exception.

As we have explained, the WIOA exception applies when a charter school “provides instruction *exclusively* in partnership with” the federal Workforce Innovation and Opportunity Act (29 U.S.C. § 3101 et seq.).

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<sup>9</sup> The trial court also considered the merits of Grossmont Union’s request for a writ of mandate regarding another charter school approved by Julian Union, which is not at issue in this appeal.

(§ 47605.1, subd. (f), italics added.) Based on the description of the educational program of Diego Valley Public Charter contained in the declaration of the school’s principal and in the school’s charter petition, the trial court concluded that Diego Valley Public Charter did not meet the requirements of the WIOA exception because “some of the instruction provided by Diego Valley [Public Charter] is not in partnership with WIOA providers.” As the trial court explained, “any instruction provided in partnership with a WIOA provider . . . is merely an optional program offered by Diego Valley [Public Charter] instead of the required curriculum.” Therefore, the school did not comply with the statutory requirement that it “provide[ ] instruction *exclusively* in partnership with . . . [¶] [t]he federal Workforce Innovation and Opportunity Act.”

With respect to the appropriate remedy for Diego Valley Public Charter’s improper operation of resource centers outside the geographical boundaries of Julian Union, the trial court noted that “[b]ecause the action for declaratory and injunctive [relief] has been bifurcated and not yet heard, the only appropriate remedy is to compel Julian Union to perform . . . ‘an act which the law specifically enjoins, as a duty resulting from an office, trust, or station’ ” by issuing a writ of mandate. (Quoting Code Civ. Proc. § 1085, subd. (a).)

In its statement of decision, the trial court granted Grossmont Union’s petition for writ of mandate and ordered Julian Union to revoke the charter of Diego Valley Public Charter, effective no later than the end of the school year on June 30, 2017. However, the trial court recognized that Julian Union had submitted a waiver application on behalf of Diego Valley Public Charter to the State Board of Education pursuant to section 33050 to request temporary exemption for Diego Valley Public Charter from the application of

the *Anderson* decision. The waiver application was still pending at the time the trial court issued its statement of decision. Therefore, the trial court stated the issuance of the writ of mandate would be subject to any determination made by the State Board of Education on the waiver application.

In May 2017, the State Board of Education granted Julian Union's waiver application for Diego Valley Public Charter, allowing it to operate resource centers outside of the geographical boundaries of Julian Union until June 30, 2018. Waivers were also granted to numerous other charter schools that had been impacted by the *Anderson* decision. The governing body of any school granted a waiver was required "to approve a transition plan that details how the charter school's resource center(s) will come into compliance with the *Anderson* court decision."

On August 2, 2017, the trial court entered judgment in favor of Grossmont Union, granting its petition for writ of mandate based on the ruling set forth in the statement of decision. Because the State Board of Education had granted Julian Union's waiver application, the trial court stayed the issuance of the writ of mandate. The judgment stated,

"The writ of mandate compelling Julian Union Elementary School District to revoke the charter of Diego Valley Public Charter is stayed during the period of the waiver granted to Diego Valley Public Charter by the State Board of Education, and the writ will be issued and become effective only if Diego Valley Public Charter continues to operate resource centers in violation of the Education Code upon the expiration of the waiver."

After the trial court entered judgment on Grossmont Union's petition for writ of mandate, SDUSD's petition and complaint challenging the operation of Diego Hills Public Charter School was still outstanding. Because SDUSD's petition presented the same issues as Grossmont Union's petition,

and because the State Board of Education had granted Dehesa’s waiver application to allow it to operate Diego Hills Public Charter School within the geographical boundaries of SDUSD until June 30, 2018, the parties stipulated that the trial court would enter judgment in favor of SDUSD based on the terms of Grossmont Union’s judgment.<sup>10</sup> Accordingly, on September 21, 2017, the trial court entered the following stipulated judgment,

“Judgment shall be entered on the pending writ of mandate claim brought by [SDUSD] as follows: the writ of mandate compelling Dehesa to revoke the charter of Diego Hills [Public Charter School] is stayed during the period of the waiver granted to Diego Hills [Public Charter School] by the State Board of Education, and the writ will be issued and become effective only if Diego Hills [Public Charter School] continues to operate resource centers in violation of the Education Code upon the expiration of the waiver.”

The judgment also stated that “[t]he Court will retain jurisdiction of this matter for purposes of enforcement of the writ of mandate.”

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<sup>10</sup> We note that the waiver obtained by Dehesa also allowed the continued operation of Diego Hills Public Charter School’s resource center in Lemon Grove, within the boundaries of Grossmont Union. The operation of that resource center was challenged in Grossmont Union’s petition and complaint, but it was not within the scope of the issues adjudicated in the trial court’s judgment in favor of Grossmont Union. Although the appellate record does not contain all of the proceedings in the trial court, Julian Union’s answer to Grossmont Union’s amended petition and complaint states that Dehesa had been dismissed from the action by Grossmont Union. The practical effect of the trial court’s order requiring Dehesa to revoke the charter of Diego Hills Public Charter School was to also close the operation of the school at the Lemon Grove location.

E. *Diego Valley Public Charter and Diego Hills Public Charter School Cease Operations, and Diego Plus Obtains Approval for Two New Charter Schools*

In response to the *Anderson* decision, Diego Plus decided to cease operations of both Diego Valley Public Charter and Diego Hills Public Charter School in 2018. However, as we will explain, Diego Plus implemented a plan to continue certain charter school operations within the geographical boundaries of Grossmont Union and SDUSD by creating two new charter schools that would comply with the Unable-to-Locate exception: Diego Valley East Public Charter School (Diego Valley East) and Diego Hills Central Public Charter School (Diego Hills Central).

Diego Valley East was created pursuant to a charter petition submitted to Julian Union in September 2017 and approved in December 2017. Diego Valley East offers a non-classroom-based program and operates two resource centers: one within San Diego County, and one within Riverside County. The resource center in San Diego County is located within the geographical boundaries of Grossmont Union and operates from the same El Cajon facility that formerly housed one of the resource centers operated by Diego Valley Public Charter. According to Diego Valley East's charter petition, the El Cajon resource center legally operates outside of Julian Union's geographical boundaries because it complies with the Unable-to-Locate exception. (Former § 47605.1, subd. (d).)<sup>11</sup>

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<sup>11</sup> Diego Valley East's charter petition states that the resource center in Riverside County is allowed to operate outside of Julian Union's geographical boundaries pursuant to the exception for out-of-county resource centers provided for in former section 47605.1, subdivision (c). Former section 47605.1, subdivision (c) stated, "Notwithstanding any other law, a charter school may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is



Diego Hills Central was created pursuant to a charter petition submitted to Dehesa in June 2017 and approved in August 2017. Like Diego Valley East, Diego Hills Central also offers a non-classroom-based program, and has one resource center in San Diego County and one resource center in Riverside County. The location in San Diego County is within the geographical boundaries of SDUSD and operates at the same facility where Diego Hills Public Charter School formerly operated a resource center. The charter petition of Diego Hills Central states that the San Diego resource center legally operates outside of Dehesa’s geographical boundaries because it complies with the Unable-to-Locate exception. (Former § 47605.1, subd. (d).)

Under the applicable provision in the Charter Schools Act, to create a charter school that plans to operate outside of the chartering school district’s geographical boundaries under the Unable-to-Locate exception (former § 47605.1, subd. (d)), two fundamental requirements had to be met *at the time the petition was approved*. First, notice had to be given to the school district in whose geographical boundaries the proposed charter school planned to operate, followed later by notice to the county superintendent. (Former § 47605.1, subd. (d).) Second, it had to be shown that “(1) The charter school has attempted to locate a single site or facility to house the entire program, but such a facility or site is unavailable in the area in which the charter school chooses to locate[; ] [or] [¶] (2) The site is needed for temporary use

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authorized if the following conditions are met: [¶] (1) The facility is used exclusively for the educational support of pupils who are enrolled in non[-]classroom-based independent study of the charter school. [¶] (2) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the charter school is authorized.” (Stats. 2016, ch. 186, § 46.)

during a construction or expansion project.” (Former § 47605.1, subd. (d); Stats. 2016, ch. 186, § 46.)

To satisfy the first requirement, Julian Union sent notice to Grossmont Union, and Dehesa sent notice to SDUSD regarding the charter petitions.<sup>12</sup> After receiving notice, a representative of Grossmont Union twice appeared at meetings of Julian Union’s Board of Education to voice opposition to locating a resource center within the geographical boundaries of Grossmont Union. Counsel for Grossmont Union also sent a letter to Julian Union in opposition to the charter petition. In contrast, SDUSD took no steps to oppose Dehesa’s approval of Diego Hills Central’s charter petition.

To satisfy the second requirement, Julian Union and Dehesa both were provided with the results of property searches performed by real estate professionals. According to the search results, no suitable real property was available within the geographical boundaries of those school districts to house the resource centers that either Diego Valley East or Diego Hills Central planned to operate.

After obtaining approval of their charter petitions, both Diego Valley East and Diego Hills Central commenced operations and enrolled students.

F. *Some of the Facilities Where Diego Valley Public Charter and Diego Hills Public Charter School Operated Are Taken Over By San Diego Workforce Innovation High School*

After Diego Valley Public Charter and Diego Hills Public Charter School closed, the facilities at two of the locations within the geographical boundaries of Grossmont Union that were formerly used by those now-closed schools were transitioned to use by another charter school, San Diego Workforce Innovation High School (SDWIHS). SDWIHS was operated by one

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<sup>12</sup> Notice was also provided to the county superintendent.

of the Charter School Corporate Entities—Western Educational—and its charter petition was originally approved by the Borrego Springs Unified School District (“Borrego Springs Unified”) effective July 1, 2016.

On June 13, 2017, Borrego Springs Unified approved a revision to the charter petition of SDWIHS, which added additional locations where the school would operate resource centers. Within the geographical boundaries of Grossmont Union, those new locations included the facility in Lakeside where Diego Valley Public Charter had operated a resource center and the facility in Lemon Grove where Diego Hills Public Charter School had operated a resource center. The revised charter petition also listed a location within the geographical boundaries of SDUSD at 2612 Daniel Avenue, which does not appear to be a facility where either Diego Valley Public Charter or Diego Hills Public Charter School formerly operated a resource center. According to SDWIHS’s revised charter petition, it operates resource centers outside the geographical boundaries of Borrego Springs Unified under the WIOA exception (§ 47605.1, subd. (f)).

G. *Grossmont Union Files a Motion for an Order to Lift the Stay on the Issuance of the Writ of Mandate and Grant Injunctive Relief*

In December 2018, Grossmont Union filed a motion requesting that the trial court lift its stay on the writ of mandate ordered in the 2017 judgment. An amended notice of motion with points and authorities was filed in March 2019. As we have explained, the writ of mandate ordered in the 2017 judgment, if issued rather than stayed, would have compelled Julian Union to revoke the petition of Diego Valley Public Charter.

The 2017 judgment implemented a stay by stating that “the writ will be issued and become effective only if Diego Valley Public Charter continues to operate resource centers in violation of the Education Code upon the expiration of the waiver.” Grossmont Union argued that the conditions to lift

the stay had been satisfied, “as the [State Board of Education] waivers have expired and Julian Union and Diego Plus continue to operate out-of-district charter schools in violation of the [Charter Schools Act].”

In making this argument, Grossmont Union acknowledged that the judgment specifically referred to the revocation of the charter of Diego Valley Public Charter, but that school had closed in 2018. However, Grossmont Union argued that the stay should be lifted and a writ of mandate should nevertheless issue because “[d]efendants feigned compliance with the Court’s decision and the [Charter Schools Act] by incorporating the same students and the same illegal facilities under two ‘new’ charter schools operated and overseen by the same persons while claiming to qualify for the same statutory exceptions already rejected by this Court—perpetuating the same illegal program.”

Grossmont Union pointed out that both Diego Valley Public Charter and Diego Valley East were operated by the same corporate entity, Diego Plus, and that Diego Plus was a party to the litigation and subject to the 2017 judgment. Further, Grossmont Union contended that “Diego Valley East lacks any separate legal existence from Diego Plus,” the corporation that operates it. Based on the fact that Diego Plus operated both the former charter school and the newly created charter school at the same resource center facility in El Cajon within Grossmont Union’s geographical boundaries, Grossmont Union argued that Diego Plus and Julian Union were improperly attempting to circumvent the 2017 judgment by operating the new charter school. According to Grossmont Union, although the name of the charter school operating at the El Cajon facility had changed, it was still the same charter school for the purposes of the 2017 judgment.

Further, Grossmont Union contended that, assuming Diego Valley East should be treated like Diego Valley Public Charter for the purposes of the 2017 judgment, the conditions to lift the stay were met because Diego Valley East was operating in violation of the Charter Schools Act. Grossmont Union argued that Diego Valley East did not qualify for the Unable-to-Locate exception because it “has in-district facilities [in Julian Union]” that it could have used for its program.<sup>13</sup> It also argued that, under the Charter Schools Act, Julian Union was not permitted to authorize the charter of Diego Valley East because “Julian Union, a K-8 school district, cannot authorize a charter school that doesn’t serve K-8 students.”<sup>14</sup> Finally, Grossmont Union contended that Diego Valley East improperly operated a resource center in Riverside County in addition to San Diego County.

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<sup>13</sup> Although the charter petition of Diego Valley East identified resource centers in El Cajon and Riverside County, it also stated that the school “shall locate and operate within District boundaries at 1704 Cape Horn, Julian, CA 92036.” A declaration submitted by Diego Plus’s Chief Executive Officer (CEO) in opposition to Grossmont Union’s motion subsequently established that “[a]t the outset of the [Diego Valley East] charter term, [Julian Union] allowed [Diego Valley East] to use an approximately 600 square foot space located at [Julian Union’s] district offices . . . . However, [Diego Valley East] does not currently use the Julian space and has not made any use of the space since December 2018.”

<sup>14</sup> Grossmont Union relied on section 47605, subdivision (a)(6), which states, “a petition to establish a charter school shall not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.” In making its argument, Grossmont Union acknowledged that “Diego Valley East’s charter petition *offers* home study and virtual programs open to K-8 students,” but it contended the provision was illusory because Diego Valley East purportedly did not actually enroll any such students. (Underscoring omitted.)

Grossmont Union’s motion also took issue with SDWIHS’s newly added resource centers in Lakeside and Lemon Grove, which are operated by Western Educational and chartered by Borrego Springs Unified. As we have explained, SDWIHS’s facility in Lakeside was previously used by Diego Valley Public Charter, and its facility in Lemon Grove was previously used by Diego Hills Public Charter School. Both facilities are within the geographical boundaries of Grossmont Union, but SDWIHS operated them pursuant to the WIOA exception. In its motion, Grossmont Union sought a “permanent injunction prohibiting . . . SDWIHS from operating within [Grossmont Union’s] boundaries.” Grossmont Union argued that it was entitled to an injunction because it believed that SDWIHS did not qualify for the WIOA exception,<sup>15</sup> and because “[b]y sweeping the same illegal facilities and WIOA ineligible students into a new charter, Diego Plus merely exchanged one illegal charter school for another.”

To obtain an injunction against SDWIHS, Grossmont Union recognized that it had to clear multiple hurdles.

As a first hurdle, neither Western Educational (the corporation that operated SDWIHS), nor Borrego Springs Unified (the school district that chartered SDWIHS) were parties to the 2017 judgment. However, Grossmont Union argued that it was still entitled to an injunction in the context of its lawsuit against Diego Plus and Julian Union because “SDWIHS is controlled by the same people and organization” that controlled Diego Valley Public

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<sup>15</sup> Grossmont Union argued that SDWIHS did not qualify for the WIOA exception for the same reason that the trial court had determined Diego Valley Public Charter to be ineligible, namely, that it did not “provide[ ] instruction exclusively in partnership with . . . [¶] [t]he federal Workforce Innovation and Opportunity Act.” (§ 47605.1, subd. (f).) We need not, and do not, express any view on whether SDWIHS complies with the WIOA exception.

Charter and Diego Hills Public Charter School. Specifically, Grossmont Union contended that “SDWIHS, operated through Western Educational Corporation, is the alter ego of Diego Plus.” To support this allegation, Grossmont Union explained that “Diego Plus is one branch of a large group of related corporations operating charter schools throughout the State and all controlled by the Lifelong Learning Administration Corporation . . . under the Learn4Life trade name,” and that Western Educational was part of that group. According to Grossmont Union, “Learn4Life/Lifelong Learning have used their charter schools as an elaborate shell game, shifting students from schools subject to lawsuits . . . to other Learn4Life schools to avoid compliance with the [Charter Schools Act’s] location requirements.”

Even though Western Educational was not sued in this litigation and was not a party to the judgment, Grossmont Union argued that because Western Educational’s alter ego Diego Plus was a party to the 2017 judgment, the trial court had authority to issue an injunction against Western Educational.

As a second hurdle, Grossmont Union had to explain why it should obtain injunctive relief in its post-judgment motion even though the 2017 judgment did not include any injunctive relief. Indeed, in the statement of decision that formed the basis for the 2017 judgment, the trial court expressly stated that it was not reaching Grossmont Union’s claim for injunctive or declaratory relief “[b]ecause the action for declaratory and injunctive [relief] has been bifurcated and not yet heard.” In its motion, Grossmont Union argued that the trial court had the authority to grant injunctive relief to enforce the writ of mandate ordered in the 2017 judgment. Specifically, Grossmont Union cited case law stating that “[a] court issuing a writ of mandate has the inherent continuing power ‘to make any orders

necessary and proper for the complete enforcement of the writ.” ’ ’ ”

(*California Lab. Federation v. Occupational Safety & Health Stds. Bd.* (1992) 5 Cal.App.4th 985, 989, fn.1 (*California Lab. Federation*)). Grossmont Union also cited Code of Civil Procedure section 1097, which states that “[i]n case of persistence in a refusal of obedience” to a writ of mandate, a court “may make any orders necessary and proper for the complete enforcement of the writ.”

In response to Grossmont Union’s motion to lift the stay and obtain issuance of a writ of mandate and injunctive relief, three separate oppositions were filed: by Diego Plus, by Julian Union, and by the other Charter School Corporate Entities along with SDWIHS.

Diego Plus argued, among other things, that (1) Diego Valley East operated the El Cajon resource center in compliance with the Charter Schools Act under the Unable-to-Locate exception; (2) nothing in the 2017 judgment prevented Diego Plus from establishing a new charter school in order to avail itself of the Unable-to-Locate exception and to locate the new school at the same facility used by Diego Valley Public Charter; (3) even assuming that Diego Valley East operated in violation of the Charter Schools Act, Diego Valley East was not the subject of the 2017 judgment, and thus its violation of the Charter Schools Act would not trigger the conditions to lift the stay; and (4) Grossmont Union improperly sought relief that was new and different from the relief received under the 2017 judgment.

The Charter School Corporate Entities and SDWIHS argued (1) there was no violation of the judgment because the new charter schools legally operated pursuant to exceptions to the Charter Schools Act’s geographical restrictions; (2) granting the requested relief as against them would improperly require the trial court to rewrite the judgment and expand its scope; and (3) they were not alter egos of Diego Plus under applicable legal



standards and could not be added to the judgment because they did not control the litigation that led to the 2017 judgment.

Julian Union made similar arguments in opposition, focusing on the trial court's lack of authority to amend the judgment, rather than enforce it, and to grant relief beyond the scope of the pleadings that Grossmont Union filed in this action. Julian Union also argued that it fully complied with the Charter Schools Act in approving the charter petition of Diego Valley East and authorizing it to operate within the geographical boundaries of Grossmont Union.

All three of the opposition briefs argued that to obtain the relief Grossmont Union sought through its motion, Grossmont Union should be required to file a new action directed at Diego Valley East and SDWIHS.

H. *The Trial Court Holds a Hearing on Grossmont Union's Motion and Issues Its Ruling*

On May 31, June 3, and June 7, 2019, the trial court held a hearing on Grossmont Union's motion. By this time, a new trial judge was assigned.

The hearing included the presentation of witness testimony over the course of two days. Specifically, the trial court heard testimony from the CEO of Lifelong Learning Administration Corporation (Lifelong Learning), the CEO of Western Educational, the CEO of Diego Plus, and a member of the Diego Plus board of directors. The testimony focused on Grossmont Union's contention that Western Educational (which operated SDWIHS) and Diego Plus were alter egos of each other, and that both of those corporations belonged to a commonly controlled group comprised of the Charter School Corporate Entities, which also includes Lifelong Learning and Educational

Advancement Corporation (EAC).<sup>16</sup>

At the hearing, the trial court accepted the parties' stipulation that the declarations and attached exhibits submitted in support of and opposition to Grossmont Union's motion would be received as additional evidence, as if submitted at the evidentiary hearing. The declarations and attached exhibits focused on issues other than whether the Charter School Corporate Entities were alter egos of each other. Among other things, Diego Plus submitted uncontradicted evidence about the curriculum and operations of Diego Valley East, including an explanation of the differences in curriculum and leadership between Diego Valley East and Diego Valley Public Charter, and evidence showing that Diego Valley East was unable to find space to locate within the geographical boundaries of Julian Union. Moreover, through the evidence filed by Julian Union in opposition to Grossmont Union's motion, the trial court had before it the entire administrative record that showed Julian Union's public consideration and approval of the charter petition of Diego Valley East as a newly-formed charter school.

At the conclusion of the hearing, the trial court orally delivered its ruling. The trial court granted Grossmont Union's motion and it directed Grossmont Union to prepare a proposed order. On June 28, 2019, the court adopted Grossmont Union's proposed order and issued it as an order of the court.

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<sup>16</sup> As the evidence showed, Lifelong Learning is a nonprofit public benefit corporation that assists with the administrative tasks of charter schools under the Learn4Life trademark, which include the schools operated by Diego Plus and by Western Educational. EAC is the sole statutory member of Lifelong Learning, Diego Plus, and Western Educational, with authority to appoint and remove directors. (Corp. Code, § 5056, subd. (a).)

In its order, the trial court first addressed the alter ego allegations. It found “that the evidence submitted by [Grossmont Union] more than sufficiently establishes that the previously unnamed Respondents (EAC, [Lifelong Learning], [Western Educational], and SDWIHS) are the alter egos of Diego Plus and that they fully participated in and controlled the underlying litigation against Diego Plus.” The trial court stated, “Learn4Life is more than a trademark: It is, in fact, a single entity operating all of the charter schools at issue in these proceedings.”

Next, the trial court addressed whether the issuance of a writ of mandate as to Diego Valley East was warranted. The trial court explained, “Diego Valley East continues to operate at two [of] the facilities formerly operated by Diego Valley [Public Charter]—the unused Julian Site and the El Cajon Site in [Grossmont Union’s] boundaries. . . . [T]his court concludes that Diego Valley East is not a new charter school. Respondents gave the old charter school different names.” Addressing whether Diego Valley East operated in violation of the Charter Schools Act’s Unable-to-Locate exception, the trial court observed that it was undisputed that “Diego Valley [Public Charter] could not have availed itself of the [U]nable[-]to[-L]ocate exception . . . after this court’s 2017 ruling.” Therefore, the trial court concluded that based on “the court’s determination that Diego Valley East is not a new charter school, the court concludes that Diego Valley East is operating in violation of this court’s 2017 statement of decision, writ, and judgment.”

In making this ruling, the trial court did not evaluate whether any of Grossmont Union’s specific arguments challenging Diego Valley East’s compliance with the Unable-to-Locate exception had merit, such as its argument that Diego Valley East could have located within Julian Union’s boundaries if it had wanted to, or that its operation of a Riverside County

resource center made it ineligible for the Unable-to-Locate exception. Instead, the trial court explained that if the now-closed Diego Valley Public Charter was unable to meet the Unable-to-Locate exception, the new school Diego Valley East should also be precluded from doing so.

Finally, the trial court addressed whether relief was warranted as to SDWIHS. “SDWIHS continues to operate at two out-of-district facilities within [Grossmont Union’s] boundaries—the Lakeside Site and the Lemon Grove Site. . . . [T]his court concludes that [Western Educational] dba SDWIHS is not a new charter school but is the alter ego of Diego Plus. [¶] In its 2017 statement of decision, this court previously determined that Diego Valley [Public Charter] did not qualify for the exclusive WIOA partnership exception because only some of Diego Valley [Public Charter’s] students were eligible youth actually enrolled in WIOA programs. Respondents have offered no evidence that SDWIHS’s program is different from Diego Valley [Public Charter’s] former program or otherwise qualifies for an exception to the [Charter Schools Act’s] in-district requirement. [¶] Accordingly, this court concludes that SDWIHS is operating in violation of this court’s 2017 statement of decision, writ, and judgment.”<sup>17</sup>

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<sup>17</sup> The evidence presented at the evidentiary hearing did not focus on establishing that SDWIHS followed a different curriculum that complied with the WIOA exception, which may explain the trial court’s statement that the Charter School Corporate Entities “offered no evidence that SDWIHS’s program is different from Diego Valley [Public Charter’s] former program or otherwise qualifies for an exception to the [Charter Schools Act’s] in-district requirement.” During the litigation of SDUSD’s motion, the Charter School Corporate Entities submitted much more detailed evidence about how SDWIHS’s curriculum is designed to meet the WIOA exception.

The trial court ordered the following remedy:

“(1) The stay of this court’s 2017 statement of decision, writ, and judgment is hereby lifted.

“(2) This court hereby amends its prior writ of mandate to direct Julian [Union] to immediately revoke the charter of Diego Valley East. . . . The court further directs the Clerk of the Court to issue under seal of this court a writ of mandate in the form attached hereto as Exhibit A.

“(3) The Court hereby issues a permanent injunction against Diego Plus precluding Diego Plus from operating charter school facilities within [Grossmont Union’s] school district boundaries, either directly, or indirectly through any of Diego Plus’s related Learn4Life charter school entities that presently exist or may be formed in the future for the purpose of operating charter schools, including but not limited to EAC, [Lifelong Learning], [Western Educational] and SDWIHS. This injunction shall remain in effect until further order from this Court.”

On June 28, 2019, the clerk of the court issued a writ of mandate, commanding Julian Union to immediately revoke the charter of Diego Valley East.

I. *SDUSD Files a Motion Seeking the Same Relief Obtained by Grossmont Union*

In June 2019, after the trial court’s decision to grant Grossmont Union’s motion, SDUSD filed a motion seeking relief to prevent Diego Hills Central and SDWIHS from operating within the geographical boundaries of SDUSD. Specifically, SDUSD sought to lift the stay of the 2017 judgment, and obtain (1) a writ of mandate directing Dehesa to revoke the charter of Diego Hills Central; and (2) an order permanently enjoining the Charter School Corporate Entities from operating charter school facilities within the geographical boundaries of SDUSD, including SDWIHS. SDUSD argued, “Just as [the Charter School Corporate Entities] simply slapped a ‘new’ name on Diego Valley [Public Charter], [they] simply slapped a new name on Diego

Hills Public Charter School . . . and continued to operate that school under the new name of ‘Diego Hills Central Public Charter School’. [They] further expanded operations within [SDUSD’s] boundaries by establishing a [SDWIHS] facility at 2612 Daniel Avenue, San Diego, California 92111.”

Two opposition briefs were filed: by Diego Plus, and by the other Charter School Corporate Entities along with SDWIHS. The opposition briefs set forth many of the same arguments raised in opposition to Grossmont Union’s motion, including that the court did not have the authority to issue the relief sought by SDUSD by amending the judgment and ordering injunctive relief. In addition, both opposition briefs argued that even assuming the Charter School Corporate Entities were alter egos of each other, the 2017 judgment did not preclude Diego Plus or its alter egos from operating other schools within SDUSD’s geographic boundaries in compliance with the Charter Schools Act.

On July 31, 2019, the trial court held a hearing on SDUSD’s motion. Although the trial court took the motion under submission at the end of the hearing and later issued an order, it explained at length why it was inclined to grant the motion. Among other things, the trial court explained that the Unable-to-Locate exception was “legally unavailable” to Diego Hills Central because it was only “pretending” to be a new school, but in fact was the same school as Diego Hills Public Charter School, which indisputably did not meet the requirements for the exception.<sup>18</sup>

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<sup>18</sup> It was undisputed that Diego Hills Public Charter School, like Diego Valley Public Charter, did not meet, and never attempted to meet, the requirements for the Unable-to-Locate exception. That exception required certain action at the time the charter petition was originally considered, namely, giving notification to the school district where the charter school will operate, as well as providing evidence that no location to house the school’s

On August 5, 2019, the trial court issued an order granting SDUSD's motion. The order stated,

“(1) The Court hereby lifts any remaining stay on the issuance of its writ of mandate . . . .

“(2) The Court amends its previous order and hereby issues a writ of mandate to direct [Dehesa] to revoke the charter of [Diego Hills Central] and further issues a permanent injunction to preclude Diego Plus from operating any charter school facilities within [SDUSD's] boundaries, either directly or through any of Diego Plus' related Learn4Life charter school entities, including but not limited to [Western Educational] and [SDWIHS]. This injunction shall remain in effect until further order from this Court.”<sup>19</sup>

J. *The Charter School Corporate Entities File Appeals*

The Charter School Corporate Entities filed appeals from the trial court's orders in favor of Grossmont Union and SDUSD. We consolidated both appeals under the same case number.<sup>20</sup>

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program was available in the chartering school district. (Former § 47605.1, subd. (d).) Moreover, the Unable-to-Locate exception allowed a school to have only a *single* out-of-district location in the county (former § 47605.1, subd. (d)), but both Diego Valley Public Charter and Diego Hills Public Charter School operated multiple out-of-district locations in San Diego County.

<sup>19</sup> Although the clerk of the court issued a writ of mandate on June 28, 2019, as a result of the order in favor of Grossmont Union, we see no indication in the appellate record that a similar writ of mandate was issued by the clerk of the court as a result of the order in favor of SDUSD.

<sup>20</sup> The parties have filed requests for judicial notice and one request to augment the record, which we hereby consider in connection with our resolution of this appeal.

First, the Charter School Corporate Entities request that we take judicial notice of school board meeting minutes. Those minutes are already contained in the appellate record because they were the subject of a request for judicial notice in the trial court, but the trial court did not rule upon the

## II. DISCUSSION

The Charter School Corporate Entities contend that the trial court's post-judgment orders should be reversed because the trial court lacked the authority to lift the stays implemented in the 2017 judgments and then issue amended writs of mandate and grant injunctive relief.<sup>21</sup>

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request. We grant the request for judicial notice. (Evid. Code, § 452, subds. (b), (h).)

Second, Grossmont Union and SDUSD make two requests for judicial notice of documents that were not before the trial court at the time of its ruling on the orders that are the subject of this appeal. The documents consist of a trial court order in a different case and a charter school application for a school in Texas. We deny the requests because “[r]eviewing courts generally do not take judicial notice of evidence not presented to the trial court” and “[n]o exceptional circumstances exist that would justify deviating from that rule.” (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.)

Finally, the Charter School Corporate Entities have filed a motion to augment the record to include the administrative record of Julian Union's consideration and approval of Diego Valley East's charter petition. As the Charter School Corporate Entities point out, the administrative record is already included in the appellate record because it was attached to a declaration filed in opposition to Grossmont Union's motion to lift the stay. As they explain, the motion to augment is made in an abundance of caution, as we might conclude that the administrative record must be transmitted on appeal and included in the record under the procedure set forth in California Rules of Court, rule 8.123(b). We deny the motion to augment because it is unnecessary. The administrative record is already properly part of the appellate record due to its attachment to a declaration filed in the trial court.

<sup>21</sup> In this appeal, the Charter School Corporate Entities have elected not to challenge the trial court's determination that they are alter egos of each other. Instead, the Charter School Corporate Entities contend that regardless of the alter ego finding, the trial court lacked the authority to order the post-judgment relief afforded in this case.



We apply a de novo standard of review when determining whether the trial court exceeded its authority in ordering relief. (*People v. Lujan* (2012) 211 Cal.App.4th 1499, 1507.)

As an initial matter, we note that the two post-judgment orders challenged in this appeal concern different school districts and different charter schools. However, because the order granting relief to SDUSD was modeled on the order granting relief to Grossmont Union, the orders share basic similarities in content and structure. Because of these similarities, it is appropriate, for the purposes of our analysis, that we consider the two orders together.

Both orders have two separate parts. First, both orders lift a stay on the issuance of a writ of mandate and direct that the chartering school district revoke the charter of the new school opened by Diego Plus after the 2017 judgments. Second, both orders put in place a permanent injunction which precludes the Charter School Corporate Entities from operating *any* charter school facility within the boundaries of the respective school districts, i.e., Grossmont Union or SDUSD.

We will proceed by separately considering, in turn, the two different parts of the orders (i.e., the writ portion and the permanent injunction portion) to determine whether, as the Charter School Corporate Entities contend, the trial court lacked the authority to make those orders.

A. *The Trial Court Improperly Lifted the Stays on Issuing the Writs of Mandate Ordered in the 2017 Judgments*

We first consider whether the trial court had the authority to lift the stays ordered in 2017 and to order that amended writs of mandate should issue compelling that the charters of Diego Valley East and Diego Hills Central be revoked.

To determine whether the conditions for lifting the stay were satisfied, we begin with the language of the 2017 judgments. The judgment in favor of Grossmont Union states “the writ will be issued and become effective only if Diego Valley Public Charter continues to operate resource centers in violation of the Education Code upon the expiration of the waiver.” Similarly, the judgment in favor of SDUSD states “the writ will be issued and become effective only if Diego Hills [Public Charter School] continues to operate resource centers in violation of the Education Code upon the expiration of the waiver.” Under that language, the stays could be lifted *only* if two different requirements were met: (1) Diego Valley Public Charter and Diego Hills Public Charter School continued to operate; *and* (2) the continued operation of those schools was in violation of the Charter Schools Act.

As we will explain, neither of the two conditions for lifting the stays were satisfied. First, the trial court lacked authority to lift the stays because the 2017 judgments specifically identified Diego Valley Public Charter and Diego Hills Public Charter School as the relevant schools that would trigger the lifting of the stays if *those schools* continued to operate resource centers. However, it is undisputed that both Diego Valley Public Charter and Diego Hills Public Charter School are no longer in operation, and there are important differences between the newly chartered schools and the now-closed schools. Second, even if, as Grossmont Union and SDUSD contend, the new schools should nevertheless be treated as interchangeable with the now-closed schools, the other prerequisite to lifting the stays did not exist because the new schools do not operate in violation of the Charter Schools Act, a conclusion that is consistent with the 2017 judgments.

1. *The Prerequisites for Lifting the Stays Were Not Satisfied Because the New Schools Are Different From the Now-Closed Schools, Which Ceased to Operate*

Although recognizing that Diego Valley Public Charter and Diego Hills Public Charter School have closed, Grossmont Union and SDUSD argue that the conditions for lifting the stays are satisfied because Diego Valley East and Diego Hills Central are in fact *the same* as the closed charter schools, but with different names. With respect to Diego Valley East, they contend that “the program did not change,” as both Diego Valley East and Diego Valley Public Charter were “operated by the same people at the same location in the same manner.” With respect to Diego Hills Central, they argue that the school was “never different” from Diego Hills Public Charter School, and that “Diego Hills [Public Charter School] morphed into Diego Hills Central and continued to operate the same program at the same illegal facility.” According to Grossmont and SDUSD, Diego Valley East and Diego Hills Central “were not new schools and were established for the express purpose of evading” the 2017 judgments.

Based on their contention that the new schools and the now-closed schools are substantively identical, Grossmont Union and SDUSD contend that the schools should therefore be treated as *interchangeable* for the purpose of determining whether the conditions for lifting the stays were satisfied. We reject the argument because, as we will explain, the new schools are not the same as the now-closed schools.

As an initial matter, we note that there are some undisputed similarities between the new schools and the now-closed schools. Diego Valley East operates at one of the same facilities (in El Cajon) where Diego Valley Public Charter operated, and Diego Hills Central operates at one of the same facilities (in San Diego) where Diego Hills Public Charter School

operated. Further, Diego Plus is the nonprofit public benefit corporation that operated and operates all of the schools. Although the record is not clear on the point, we also assume that the now-closed charter schools have at least some of the same student body as the new charter schools.

However, as is clear from the Charter Schools Act, charter schools exist as separate educational institutions by virtue of their charters. A charter petition must be submitted to the chartering school district for approval<sup>22</sup> and must contain extensive information about the charter school’s compliance with applicable requirements and description of curriculum. (§ 47605.) School charters are valid for a period of five years, and thereafter must be renewed (§ 47607, subd. (a)), and if additional sites or grade levels are added, the school must request a material revision of its charter. (*Ibid.*) “[C]harter schools are *strictly* creatures of statute. From how charter schools come into being, to who attends and who can teach, to how they are governed and structured, to funding, accountability and evaluation—the Legislature has plotted all aspects of their existence.’” (*United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (2012) 54 Cal.4th 504, 521.) The record is clear that Diego Valley East and Diego Hills Central operate pursuant to *new charters* approved by Julian Union and Dehesa, respectively. The charter petitions submitted by each of the schools are extensive documents, each encompassing over 60 pages of detailed information about the school and its programs.

Although Grossmont Union and SDUSD attempt to portray the creation of the new charter schools as a secret and nefarious scheme to evade the 2017 judgments, alleging “secret[ ] collu[sion]” and “corporate sleight of

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<sup>22</sup> In some cases, not relevant here, the charter petition may instead be submitted to a county board of education. (§§ 47605.5, 47605.6.)

hand,” the record is clear that Diego Plus was very public about its plan to comply with the Charter Schools Act by closing Diego Valley Public Charter and Diego Hills Public Charter School and obtaining charters for new charter schools that would operate under the Unable-to-Locate exception. Indeed, Grossmont Union and SDUSD received notice of the charter petitions, and representatives of Grossmont Union twice appeared before Julian Union’s governing board to oppose Diego Valley East’s petition.

Moreover, as the uncontradicted evidence establishes, a substantial number of differences exist in the staffing and educational programs offered by the now-closed charter schools and the new charter schools. These differences are detailed in declarations that were submitted by Diego Plus in opposition to Grossmont Union’s and SDUSD’s post-judgment motions, and no evidence was offered to the contrary.

As the evidence shows, Diego Valley East does not have the same principal as Diego Valley Public Charter, and has numerous differences in its curriculum. Unlike Diego Valley Public Charter, the curriculum at Diego Valley East includes (1) a mandatory “onboarding class”; (2) mandatory skills testing at enrollment that is used to assign students to mandatory reading and math intervention courses; (3) small group instruction in math, science, and social studies as an alternative to independent study; (4) a specific professional development program; and (5) implementation of the Trauma Informed Career and Community School model “that utilizes partnerships to connect the school, families, students, and the surrounding community.” Grossmont Union submitted no evidence to dispute these facts.

Diego Hills Central also operates with significant differences from Diego Hills Public Charter School. Diego Hills Central has new administrators and teachers, and the expectations for teachers include

different performance goals and participation in a different professional development program. Diego Hills Central also implemented differences in curriculum and programs from Diego Hills Public Charter School. These included some of the same innovations implemented by Diego Valley East that we have listed above, as well as (1) career training education classes, including computer networking certification, digital media arts, health/care nursing, and child development; (2) a support group program for parenting students; and (3) expanded math and reading intervention classes. During the litigation of its post-judgment motion, SDUSD made no attempt to dispute any of this evidence.<sup>23</sup>

The new schools are also different from the now-closed schools in that the new schools operate significantly fewer resource centers. In order to comply with the Unable-to-Locate exception, which allowed a charter school to operate *only a single site* in the county of the chartering district (former § 47605.1, subd. (d)), each of the new charter schools limit themselves to only a single in-county resource center. Specifically, Diego Valley East operates a resource center in El Cajon, and Diego Hills Central operates a resource center in San Diego. In contrast, both Diego Valley Public Charter and Diego Hills Public Charter School operated multiple resource centers throughout the county.

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<sup>23</sup> Grossmont Union and SDUSD point to evidence in the record which may show that Diego Hills Public Charter School and Diego Hills Central operated during overlapping time periods at the same facility. Regardless of whether the evidence supports this factual assertion, we do not view it as relevant to the issue of whether the schools are, in fact, the same entity. It is undisputed that Diego Hills Public Charter School and Diego Hills Central have different charters, different teachers and administrators, and a different curriculum, and that Diego Hills Public Charter School has ceased operations.

The trial court’s alter ego finding is not relevant to whether the new schools should be treated as interchangeable with the now-closed schools. Significantly, the alter ego doctrine concerns only the question of whether a person or entity should be treated as identical to a corporation.

“ ‘Ordinarily, a corporation is regarded as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation’s acts as if they were done by the persons actually controlling the corporation.’ ” (*Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1106.) As relevant here, “[a] court may . . . disregard the corporate form in order to hold one corporation liable for the debts of another affiliated corporation when the latter ‘is so organized and controlled, and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit, or adjunct of another corporation.’ ” (*Id.* at p. 1107.) This is the “ ‘single-business-enterprise’ ” theory’ ” that the trial court relied upon for its alter ego determination. (*Id.* at p. 1108.) When an alter ego finding is made, the court has the authority to amend a judgment to add a nonparty alter ego as a judgment debtor. (*Id.* at p. 1106.) Here, the trial court’s alter ego finding established that certain corporations were alter egos of each other under the single-business-enterprise theory. However, the charter schools themselves are not corporations, and thus cannot be alter egos of one another. As the evidence shows, the new schools are distinct entities from the now-closed schools because they came into existence due to different charters, and because there are undisputed differences in their operations.

In sum, because they were created pursuant to different charters, and because of factual differences in curriculum and leadership between the now-closed schools and the new schools, the trial court improperly treated the schools as interchangeable for the purpose of determining whether the prerequisites for lifting the stay were satisfied.

2. *Even If They Could Be Treated As Interchangeable With the Now-Closed Schools, Diego Valley East and Diego Hills Central Operate in Compliance With the Charter Schools Act Under the Unable-to-Locate Exception*

Even assuming for the sake of argument that the now-closed charter schools and the new charter schools should be treated as interchangeable for the purpose of determining whether the conditions for lifting the stays were satisfied, the 2017 judgments state that the stays will be lifted *only* if the schools continue to operate in violation of the Charter Schools Act.

As the evidence shows, both Diego Valley East and Diego Hills Central justify their operations outside of the geographical boundaries of their chartering school districts pursuant to the Unable-to-Locate exception. During the briefing of the motions to lift the stay, Grossmont Union set forth several theories as to why Diego Valley East did not comply with the Unable-to-Locate exception.<sup>24</sup> However, Grossmont Union does not continue to assert any of those arguments on appeal. Instead, both Grossmont Union and SDUSD contend that even if Diego Valley East and Diego Hills Central

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<sup>24</sup> As we have explained, Grossmont Union argued in the trial court that Diego Valley East did not qualify for the Unable-to-Locate exception based on (1) its facility in Julian Union and ability to locate within Julian Union if it chose to do so; (2) its resource center in Riverside County; and (3) the fact that it did not serve K-8 students. The motion for post-judgment relief filed by SDUSD, in contrast, did not specifically argue that Diego Hills Central failed to comply with any specific requirement of the Unable-to-Locate exception.



might technically comply with all the requirements of the Unable-to-Locate exception, the schools are precluded from taking advantage of that exception because they are *the same* as the now-closed schools. They argue that because the now-closed schools did not attempt to comply with the Unable-to-Locate exception, the new schools also should not be permitted to take advantage of that exception.

We reject the argument. The Unable-to-Locate exception has specific requirements that were set forth in the Charter Schools Act. (Former § 47605.1, subd. (d).) All of the evidence indicates that Diego Valley East and Diego Hills Central met those requirements. Both schools took steps while their charter petitions were being considered to show that (1) they could not locate their programs within the chartering school district, and (2) they had given appropriate notice to the school districts where their out-of-district resource centers would be located. (Former § 47605.1, subd. (d).) Further, both schools were designed from the beginning with only a single out-of-district location in San Diego County, as required by the Unable-to-Locate exception. (Former § 47605.1, subd. (d).)

In determining that the schools did not comply with the Unable-to-Locate exception, the trial court inserted a requirement into the Charter Schools Act that has no basis in the statute or in the 2017 judgments. Specifically, the trial court assumed that Diego Plus was not legally permitted to obtain a new charter under the Unable-to-Locate exception if Diego Plus's new charter school would operate at the same facility where Diego Plus formerly operated a school that lost its charter pursuant to the 2017 judgments. However, nothing in the Charter Schools Act prohibits a charter school operator from closing a school and then opening a new school, at the same location, under the procedures outlined in the statute for the

Unable-to-Locate exception. As the Charter School Corporate Entities persuasively argue, “If the Legislature had wanted to prohibit schools from invoking the [U]nable-to-[L]ocate [exception] in response to prior litigation or a change in the law, it would have included that rule in the statute. It did not. And if the Legislature had wanted schools to show they are sufficiently ‘new’ in the sense of being materially different than previous schools, it could have included such a requirement in the statute. But . . . it did no such thing.”

In addition, nothing in the language of the 2017 judgments prohibited Diego Plus from shutting the charter schools that were the subject of the 2017 judgments and then obtaining approval for new charter schools that fully complied with the Unable-to-Locate exception. The 2017 judgments set forth no restriction on how Diego Plus could attempt to come into compliance with the Charter Schools Act. Instead, the 2017 judgments stated only that the schools could not “continue[ ] to operate resource centers in violation of the Education Code upon the expiration of the waiver[s].” As specifically relevant here, the 2017 judgments contained no indication that the trial court intended to eliminate Diego Plus’s ability to obtain approval for a new school, at the same location, as long as it complied with the statutory requirements in the Charter Schools Act.

In sum, we conclude that the trial court lacked authority to lift the stay of the 2017 judgments because the prerequisites for doing so were not satisfied. Diego Valley Public Charter and Diego Hills Public Charter School ceased to operate. But even if the new schools are treated as interchangeable with the now-closed schools, the new schools do not operate resource centers in violation of the Charter Schools Act.

B. *The Trial Court Improperly Ordered Permanent Injunctions Against the Charter School Corporate Entities*

We next consider the portion of the post-judgment orders that put in place permanent injunctions to preclude the Charter School Corporate Entities from operating *any* charter school facility within the geographical boundaries of Grossmont Union and SDUSD. Grossmont Union and SDUSD contend that the trial court had the authority to issue the permanent injunctions in order to enforce the writs of mandate ordered in the 2017 judgments. We disagree, for two reasons.

First, as we have discussed, the conditions for lifting the stays of the 2017 judgments were not met. Without a lifting of the stays, there was no active litigation and thus no vehicle by which the trial court could issue the permanent injunctions in this case. This ground in itself is a sufficient reason for reversing the permanent injunctions.

Second, even were we to assume for the sake of argument that the requirements for lifting the stays were satisfied, the permanent injunctions far exceeded the trial court's authority because, as we will explain, the injunctions were not necessary for the enforcement of its writs of mandate.

Grossmont Union and SDUSD argue that the permanent injunctions were properly issued based on the rule that “[a] court issuing a writ of mandate has the inherent continuing power ‘to make any orders necessary and proper for the complete *enforcement* of the writ.’ ” (*California Lab. Federation, supra*, 5 Cal.App.4th at p. 989, fn. 1, italics added.) A court's authority to issue orders enforcing a writ is based on Code of Civil Procedure, section 1097, which states that “[i]n case of persistence in a refusal of obedience [of a writ of peremptory mandate], the court . . . may make any orders necessary and proper for the complete *enforcement* of the writ.” (Italics added.) According to Grossmont Union and SDUSD, the trial court

did not exceed its authority to make orders directed at *enforcing* the writs of mandate.

To determine whether the permanent injunctions were directed at enforcing the writs of mandate, we must focus on the scope of the relief afforded by those writs. The 2017 judgments ordered nothing more than that Julian Union would be required to revoke the charter of Diego Valley Public Charter, and Dehesa would be required to revoke the charter of Diego Hills Public Charter School if those schools continued to operate in violation of the Charter Schools Act. Grossmont Union’s petition and complaint also broadly sought “injunctive relief to preclude Respondents from opening or continuing to operate any facilities within Grossmont’s geographic boundaries” and SDUSD similarly sought “injunctive relief . . . precluding Respondents/Defendants/Real Parties from establishing additional or different facilities outside their respective authorizers’ boundaries.” However, the trial court did not rule on any of the injunctive relief claims brought by Grossmont Union or SDUSD before issuing the 2017 judgments.

In light of the limited scope of the writs of mandate ordered in the 2017 judgments, the permanent injunctions were not necessary to enforce the writs. Other than ordering that the charters of Diego Valley Public Charter and Diego Hills Public Charter School be revoked if they continued to operate in violation of the Charter Schools Act, the writs of mandate did not prohibit Diego Plus and its alter egos from operating *other* charter schools within the geographical boundaries of Grossmont Union and SDUSD. However, the effect of the permanent injunctions was to put in place exactly such a broad prohibition. Such a wide-sweeping injunction goes far beyond the relief ordered in the writs of mandate, and is in no way necessary for the enforcement of those writs.

Even were we to look beyond the legal principles that define the type of post-judgment orders permitted after the court orders a writ of mandate, the trial court's issuance of the permanent injunctions also violates a generally applicable rule that applies in all types of litigation. Specifically, after judgment is entered, a court may not retain jurisdiction "to materially change the adjudication of substantial issues." (*Gold v. Gold* (2003) 114 Cal.App.4th 791, 806; see also *Orban Lumber Co. v. Fearrien* (1966) 240 Cal.App.2d 853, 855 [trial court correctly determined that the court's reserved jurisdiction "permitted supervision but not revision"].) Here, although the trial court retained jurisdiction to enforce the 2017 judgments, that retention of jurisdiction did not permit it to *expand* the scope of its judgments by adding broad injunctive relief that impacted charter schools and school districts, such as SDWIHS and Borrego Springs Unified, that were not the subject of the relief ordered in the 2017 judgments.

Further, the trial court's alter ego determination has no bearing on whether the trial court properly issued the permanent injunctions. If the 2017 judgments had been broad enough to preclude Diego Plus from operating *any* charter school within the geographical boundaries of Grossmont Union and SDUSD, then Diego Plus's alter egos could *also* have been made subject to an injunction that enforced such a judgment. In that case, Western Educational might properly have been enjoined from operating SDWIHS within the geographical boundaries of Grossmont Union or SDUSD. However, because the 2017 judgments contained no such broadly applicable order, the trial court did not have authority to issue the permanent injunctions against *any party*, whether against Diego Plus or against one of Diego Plus's alter egos.

In sum, the permanent injunctions issued by the trial court exceeded the trial court's authority. The permanent injunctions were not necessary to enforce the writs of mandate, and they added additional substantive relief not ordered in the 2017 judgments. The orders must therefore be reversed.

DISPOSITION

The trial court's orders dated June 28, 2019, and August 5, 2019, are reversed. Further, the trial court is ordered to direct the clerk of the court to withdraw any writ of mandate that issued as a result of its June 28, 2019 and August 5, 2019 orders. Appellants shall recover their costs on appeal.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

DATO, J.

