

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THIRD CIRCUIT

No. 25-2071

B. S. M.; GABRIELLE M.,

Appellants

v.

UPPER DARBY SCHOOL DISTRICT

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(District Court No. 2:21-cv-05164)
District Judge: Honorable Anita B. Brody

Submitted under Third Circuit L.A.R. 34.1(a)
March 27, 2026

Before: HARDIMAN, SCIRICA, and AMBRO, Circuit Judges

(Opinion filed: April 29, 2026)

OPINION*

AMBRO, *Circuit Judge*

B.S.M. (“Brooklyn”) was a student in the Upper Darby School District from 2016 through 2021. She and her mother, Gabrielle M., contend the School District should have identified her as a student with a disability earlier than it did. Specifically, they argue the School District violated its Child Find obligation under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794. The United States District Court for the Eastern District of Pennsylvania ultimately disagreed and denied judgment for Brooklyn and her mother. *B.S.M. v. Upper Darby Sch. Dist.*, No. 21-5164, 2025 WL 1311909, at *8 (E.D. Pa. May 6, 2025). For the reasons that follow, we affirm.

I. BACKGROUND

Beginning in kindergarten, Brooklyn experienced academic problems. She was below the benchmark in speech and language skills such as sound fluency and phoneme fluency. In the middle of the school year, her mother requested that the School District conduct a comprehensive evaluation to test “for any learning differences.” App. 692. It agreed to conduct a speech and language evaluation, but it did not conduct cognitive achievement testing because Brooklyn, among other things, performed sufficiently on other classroom-

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

based assessments and standardized testing. The evaluation report showed that she was eligible for an individualized education plan (“IEP”) to address her speech and language impairment.

During first grade, Brooklyn scored poorly on some math and reading assessments, but better on others. The School District did not conduct any sort of evaluation. In second grade, Brooklyn began to display social and emotional problems, while her academic performance remained variable. After Brooklyn expressed suicidal ideations to her family physician, her mother brought her to a psychologist. The psychologist diagnosed Brooklyn with “Other Specified Depressive Disorder,” for which she underwent therapy. App. 827. The District Court found that Brooklyn’s mother “did not make the depression diagnosis known to the [School] District during Brooklyn’s second-grade year.” *B.S.M.*, 2025 WL 1311909 at *7. By the end of the year, Brooklyn had completed her IEP goals and stopped receiving special education services.

As a third-grade student, Brooklyn continued to exhibit some social difficulties and her academic performance was again mixed. She sometimes became upset in the classroom, which prompted the class teacher to call Brooklyn’s mother, who asked for Brooklyn to see a social worker. In that meeting, Brooklyn told the social worker she was upset because her parents might separate.

Brooklyn continued to struggle emotionally in fourth grade. In October 2020, an outside provider diagnosed her with Disruptive Mood Dysregulation Disorder (“DMDD”). That same fall, the School District conducted a comprehensive psychoeducational evaluation of Brooklyn at her mother’s request. The results showed that Brooklyn was not

eligible for an IEP based on a specific learning disability or emotional disturbance. But the report recommended that the School District implement a Section 504 plan to address Brooklyn's math weaknesses and her emotional needs. On January 11, 2021, the School District issued a Section 504 plan for her.

Although she consented to the plan, Brooklyn's mother disagreed with the School District's decision not to provide Brooklyn with an IEP. She filed an administrative due process complaint against the School District, raising claims under both the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, *et seq.*, and Section 504. The hearing officer concluded that the School District did not violate its Child Find obligation under either statute but did determine that the School District's Section 504 plan was inadequate. So the hearing officer ruled that Brooklyn was entitled to one hour of compensatory education per week during which school would have been in session from January 11, 2021—the start date of her Section 504 plan—until an appropriate plan was developed.

The District Court for the Eastern District of Pennsylvania affirmed the hearing officer's conclusion. Brooklyn appealed that decision, and we held that the District Court erred in granting judgment for the School District because it impermissibly treated Brooklyn's Section 504 claim "as subsumed within" her failed IDEA claim. *B.S.M. v. Upper Darby Sch. Dist.*, 103 F.4th 956, 963–66 (3d Cir. 2024). So we vacated the Section 504-related judgment and remanded for the District Court to resolve the "factual question" as to "when the School District was put on notice of Brooklyn's emotional struggles," such that it "should have reasonably suspected her of qualifying as disabled under Section 504

earlier than it did.” *Id.* at 965. On remand, the District Court determined that the School District did not have reasonable notice of Brooklyn’s disability before fourth grade and again granted judgment to the School District. *B.S.M.*, 2025 WL 1311909 at *8. This appeal followed.

II. JURISDICTION AND STANDARD OF REVIEW

The District Court had jurisdiction under 28 U.S.C. § 1331 and 20 U.S.C. § 1415(i)(2). We have jurisdiction under 28 U.S.C. § 1291. *See D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 243 (3d Cir. 2012). We review the District Court’s factual findings for clear error and its legal conclusions de novo. *B.S.M.*, 103 F.4th at 962. “A finding of fact is clearly erroneous when, after reviewing the evidence, the court of appeals is left with a definite and firm conviction that a mistake has been committed.” *Id.* (cleaned up).

III. DISCUSSION

The sole question the District Court considered on remand was whether the School District “should have reasonably suspected [Brooklyn] of qualifying as disabled under Section 504 earlier than it did.” *Id.* at 965. The Court found that the School District “would not have had a reason to believe that Brooklyn qualified as disabled under Section 504” prior to her fourth-grade year. *B.S.M.*, 2025 WL 1311909, at *7.

Section 504 prohibits discrimination against students on the basis of disability, which it defines broadly. *B.S.M.*, 103 F.4th at 963. To qualify, a student must “(i) ha[ve] a physical or mental impairment which substantially limits one or more major life activities, (ii) ha[ve] a record of such an impairment, or (iii) [be] regarded as having such as impairment.” 34 C.F.R. § 104.3(j)(1). Section 504 also contains a Child Find

requirement, which obligates school districts to identify students “who are reasonably suspected of having a disability.” *P.P. ex rel. Michael P. v. W. Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir. 2009); *see* 34 C.F.R. § 104.32. However, a district does not necessarily violate its Child Find obligation when it fails to identify a student as disabled at the “earliest possible moment.” *Abington*, 696 F.3d at 249. Because some disabilities are hard to diagnose, the school’s actions need only be reasonable based on what it knew at the time. *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 272 (3d Cir. 2012).

Brooklyn argues that the District Court erred by limiting its consideration of disability under Section 504 to a “psychological disorder” when it should have considered the evidence as indicative of disability writ large. Brooklyn Br. 3. We agree with the premise that disabilities under Section 504 are not limited to psychological disorders. But other than the DMDD diagnosis Brooklyn received in Fourth Grade (in response to which the School District implemented a Section 504 plan), the only other disability she points to is the depressive disorder she was diagnosed with in Second Grade.¹ She does not explain how her academic, social, and emotional challenges should have alerted the School District to the need to develop a 504 plan to address her needs related to that diagnosis.

Brooklyn fails to identify any other physical or mental disability that substantially limited her performance in school. She insists generally that the multitude of behaviors

¹ As noted above, the District Court found that Brooklyn’s mother never communicated her child’s depression diagnosis to the School District. *B.S.M.*, 2025 WL 1311909, at *7. *Id.* She was unable to remember how or when she conveyed the depression diagnosis to the School District, and the record lacks any documentation of her doing so. Thus, there was no clear error.

she presents “fit the broad definition of [some unidentified] disability under Section 504.” Brooklyn Br. 13. But as we have explained, behavioral problems do not automatically “denote[] a disability or disorder.” *Abington*, 696 F.3d at 251. Brooklyn cannot maintain that the School District failed to identify a particular disability that she also fails to identify.

Moreover, the record supports the District Court’s finding that Brooklyn’s academic struggles did not give the School District a reason to conduct a Section 504 evaluation prior to fourth grade. Throughout her elementary years, Brooklyn’s academic performance varied—from below average, to basic, to above average. Given her uneven record, we do not think the School District violated its Child Find obligation. *See Abington*, 696 F.3d at 252 (providing that schools do not need to evaluate “every student exhibiting below-average capabilities, especially at a time when young children are developing at different speeds and acclimating to the school environment”). “Child Find does not demand that schools conduct a formal evaluation of every struggling student.” *Id.* at 249.

The evidence offered of Brooklyn’s social and emotional challenges does not suggest otherwise. Brooklyn’s teachers reported that she struggled with self-control, became upset easily, and struggled to communicate her emotions. However, she does not connect any of these specific behavioral observations to a particular disorder that the School District failed to identify. Without knowledge of Brooklyn’s mental health diagnosis, the School District had no basis to suspect Brooklyn had a disability prior to learning of her DMDD diagnosis in 2020.

* * * * *

Brooklyn did not meet her burden of showing by a preponderance of the evidence that the School District violated its Child Find obligation under Section 504. Thus, the District Court did not err in granting judgment for the School District on the administrative record. Accordingly, we affirm.