

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

<b>J.D., by his father and next friend,</b>	)	
<b>BRIAN DOHERTY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>Case No. 2:17-CV-382 (RBS-RJK)</b>
	)	
<b>COLONIAL WILLIAMSBURG</b>	)	
<b>FOUNDATION,</b>	)	
	)	
<b>Defendant.</b>	)	

**DEFENDANT COLONIAL WILLIAMSBURG FOUNDATION’S ANSWER**

Defendant Colonial Williamsburg Foundation (“Colonial Williamsburg”), by counsel, sets forth the following as its Answer to the Complaint filed by Plaintiff. Colonial Williamsburg adamantly denies it violated any laws or mistreated Plaintiff in any manner. Colonial Williamsburg advised Plaintiff’s school before the school’s trip that it did not allow outside food in its taverns but offered to prepare gluten-free meals for Plaintiffs as an accommodation, and the school ordered them on the Plaintiffs’ behalf. These meals were carefully prepared by the Shields Tavern (the “Tavern”) head chef, who is trained to prepare gluten-free meals and frequently and competently does so for Tavern guests. On the night of the Plaintiffs’ visit, the Tavern altered its menu to accommodate several other visitors with food allergies and food preferences in other groups. Mr. Doherty nonetheless rejected the meals prepared by the Tavern for Plaintiffs because he said he did not trust the kitchen. The Tavern’s head chef offered to prepare other gluten-free food for Plaintiffs but Mr. Doherty refused that accommodation as well, insisting that the Plaintiffs would only eat the outside food they brought into the Tavern. Plaintiffs were not told to leave the Tavern, but were instead free to stay and enjoy the Tavern

experience. The Plaintiffs chose to leave and eat outside. They were not exposed to the elements, but instead ate in a covered pavilion. The Tavern's manager saw them leave to eat outside and could tell they were upset, so she sent the only historical interpreter in the Tavern to entertain them while they ate. As a result, they received more personal attention than any other guest in the Tavern that evening.

To the extent not specifically admitted herein, all allegations in the Complaint are denied. The section headings included herein reflect the section headings in the Complaint.

### **PRELIMINARY STATEMENT**

1. Colonial Williamsburg admits that Plaintiff has filed an action against it under the laws identified in Paragraph 1 of the Complaint. Colonial Williamsburg first learned of this Complaint in the media because Plaintiff issued a press release before sending it to Colonial Williamsburg or filing with the Court. Colonial Williamsburg lacks knowledge or information sufficient to form a belief about the truth of the allegations related to Plaintiff's medical condition, his eagerness to visit Colonial Williamsburg and his efforts to raise funds for the trip. Colonial Williamsburg denies the remaining allegations in Paragraph 1 of the Complaint.

2. Colonial Williamsburg admits that Plaintiffs seek the types of relief alleged in Paragraph 2 of the Complaint, but denies that Plaintiffs are entitled to this relief or any other relief.

### **THE PARTIES**

3. Colonial Williamsburg lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 3 of the Complaint.

4. Colonial Williamsburg admits that it is a non-profit organization that provides educational experiences to visitors of all ages, including school tour groups, and that its mission

is to “feed the human spirit by sharing America’s enduring story.” Colonial Williamsburg further admits that it receives correspondence at P.O. Box 1776, Williamsburg, Virginia, 23187-1776 and that it has an address at 101 (not 100) Visitor Center Drive, Williamsburg, Virginia, 23185.

5. Colonial Williamsburg admits the allegations in Paragraph 5 of the Complaint.

6. Colonial Williamsburg denies the allegations in Paragraph 6 of the Complaint.

Colonial Williamsburg is not a regular recipient of federal financial assistance or state funding. Rather, Colonial Williamsburg occasionally applies for and receives grants from agencies of the federal government. Colonial Williamsburg also occasionally contracts to provide services to the Commonwealth of Virginia and the federal government.

#### **JURISDICTION**

7. Colonial Williamsburg admits the allegations in Paragraph 7 of the Complaint.

#### **FACTUAL ALLEGATIONS**

8. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the allegations in Paragraph 8 of the Complaint.

9. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 9 of the Complaint.

10. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 10 of the Complaint.

11. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 11 of the Complaint.

12. Colonial Williamsburg admits the allegations in Paragraph 12 of the Complaint.

13. Colonial Williamsburg admits that Plaintiff's school arranged the trip through Colonial Williamsburg but denies the remaining allegations in Paragraph 13 of the Complaint. Colonial Williamsburg avers that after learning of Colonial Williamsburg's policy that outside food was not allowed in the Tavern, Plaintiff's school ordered gluten-free meals for Plaintiffs, which were carefully prepared by the Tavern's head chef and were completely safe for someone with a severe gluten allergy to eat. The Tavern routinely prepares such meals for its guests.

14. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 14 of the Complaint.

15. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 15 of the Complaint.

16. Colonial Williamsburg admits the allegations in Paragraph 16 of the Complaint.

17. Colonial Williamsburg admits that it owns and operates the Tavern, where it serves food, that costumed servers work there, and that on the night Plaintiffs were present, there was one historical interpreter working. Colonial Williamsburg denies the remaining allegations in Paragraph 17 of the Complaint and avers the Tavern's kitchen staff is professionally trained and regularly prepares quality food to meet the needs of its customers who suffer from gluten and other food allergies.

18. Colonial Williamsburg admits that the Plaintiffs visited the Tavern on or about May 11, 2017 and Plaintiff's school group was seated in the Tavern. Colonial Williamsburg denies that Plaintiff's school group was the only group in the Tavern at the time, and avers the Tavern was crowded with other guests. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the remaining allegations in Paragraph 18 of the Complaint.

19. Colonial Williamsburg denies the allegations in Paragraph 19 of the Complaint and avers that Mr. Doherty informed one of the group's servers that Plaintiffs had their own food and then proceeded to remove food, plates, and utensils from a cooler that he had carried into the Tavern. The server explained the situation to the Tavern manager, who politely explained to Mr. Doherty that they could not dine on meals and use plates and utensils that they brought into the Tavern (as had already been previously explained to the trip leader during the scheduling process), but that the Tavern would be happy to provide them with the gluten-free meals specially prepared for them. Colonial Williamsburg avers that the Tavern's kitchen staff is professionally trained and regularly prepares quality meals to meet the needs of its customers who suffer from gluten and other allergies. On the night of the Plaintiffs' visit, the Tavern altered its menu to accommodate several other visitors with food allergies and food preferences in other groups. Mr. Doherty stated that he did not trust the Tavern's kitchen and refused the meals. The manager then retrieved the head chef who reassured Mr. Doherty that he had personally prepared the gluten-free meals, which they could eat safely. Plaintiff's father said he was not interested. The head chef offered to cook another meal for them, but again Mr. Doherty refused. No one asked Plaintiffs to leave and they were free to stay and enjoy the Tavern, but Mr. Doherty chose to leave. He asked where they could eat the food they had brought with them, and was informed there was a covered pavilion outside the Tavern.

20. Colonial Williamsburg denies the allegations in Paragraph 20 of the Complaint. Nobody ever told Plaintiffs that they had to leave Shields Tavern.

21. Colonial Williamsburg denies the allegations in Paragraph 21 of the Complaint.

22. Colonial Williamsburg denies the allegations in Paragraph 22 of the Complaint and avers that the Tavern's manager assigned the only historical interpreter working at Shields Tavern that evening, "Big Dan McKenzie," to entertain Plaintiffs while they ate, thereby ensuring they received more attention than any other guest at the Tavern that evening.

23. Colonial Williamsburg denies the allegations in Paragraph 23 of the Complaint and avers that "Big Dan McKenzie" entertained Plaintiffs under a covered pavilion with stories of Colonial times, including Blackbeard and other pirates, which were of particular interest to Plaintiffs. When finished, they returned to the Tavern in good spirits, and Plaintiff's classmates welcomed him back to the group. The group then left for a tour. Sometime later after the tour, Mr. Doherty returned to the Tavern, loudly demanded to see a manager and shouted to the assembled staff "I am going to sue you for violating the ADA."

24. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 24 of the Complaint but avers it took many reasonable steps to ensure that Plaintiffs could eat a quality gluten-free meal in a historic tavern.

25. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 25 of the Complaint.

26. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 26 of the Complaint.

27. Colonial Williamsburg admits that it has previously received grants from federal government agencies, but it denies the remaining allegations in Paragraph 27 of the Complaint.

28. Colonial Williamsburg denies the allegations in Paragraph 28 of the Complaint.

**COUNT I – SECTION 504 OF THE REHABILITATION ACT OF 1973**

29. Colonial Williamsburg incorporates by reference the preceding paragraphs of this Answer.

30. Colonial Williamsburg denies the allegations in Paragraph 30 of the Complaint.

31. Colonial Williamsburg admits that it has previously received grants from federal government agencies, but it denies the remaining allegations in Paragraph 31 of the Complaint.

32. Colonial Williamsburg denies the allegations in Paragraph 32 of the Complaint.

33. Colonial Williamsburg denies the allegations in Paragraph 33 of the Complaint.

34. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the frequency of Plaintiff's visits to Williamsburg or Colonial Williamsburg, or his intention to return later this year, but denies the remaining allegations in Paragraph 34 of the Complaint.

**COUNT II – AMERICANS WITH DISABILITIES ACT**

35. Colonial Williamsburg incorporates by reference the preceding paragraphs of this Answer.

36. Paragraph 36 of the Complaint calls for a legal conclusion which Colonial Williamsburg is not required to admit or deny.

37. Paragraph 37 of the Complaint calls for a legal conclusion which Colonial Williamsburg is not required to admit or deny.

38. Colonial Williamsburg denies the allegations in Paragraph 38 of the Complaint.

39. Paragraph 39 of the Complaint calls for a legal conclusion which Colonial Williamsburg is not required to admit or deny.

40. Colonial Williamsburg denies the allegations in Paragraph 40 of the Complaint.

41. Paragraph 41 of the Complaint calls for a legal conclusion which Colonial Williamsburg is not required to admit or deny.

42. Colonial Williamsburg denies the allegations in Paragraph 42 of the Complaint.

43. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the frequency of Plaintiff's visits to Williamsburg or Colonial Williamsburg, or his intention to return later this year, but Colonial Williamsburg would welcome him visiting again. Colonial Williamsburg denies the remaining allegations in Paragraph 43 of the Complaint.

**COUNT III – VIRGINIA RIGHTS OF PERSONS WITH DISABILITIES ACT**

44. Colonial Williamsburg incorporates by reference the preceding paragraphs of this Answer.

45. Colonial Williamsburg denies the allegations in Paragraph 45 of the Complaint.



46. Colonial Williamsburg denies the allegations in Paragraph 46 of the Complaint.

47. Colonial Williamsburg denies the allegations in Paragraph 47 of the Complaint.

48. Colonial Williamsburg denies the allegations in Paragraph 48 of the Complaint.

49. Colonial Williamsburg denies the allegations in Paragraph 49 of the Complaint.

50. Colonial Williamsburg lacks knowledge or information sufficient to form a belief regarding the frequency of Plaintiff's visits to Williamsburg or Colonial Williamsburg, or his intention to return later this year, but Colonial Williamsburg would welcome him visiting again. Colonial Williamsburg denies the remaining allegations in Paragraph 50 of the Complaint.

#### **RELIEF**

Colonial Williamsburg denies that the Plaintiff is entitled to the relief requested in the Complaint or any other relief. Colonial Williamsburg further denies that it discriminated against Plaintiff and avers that its policies and practices comply with state and federal laws.

#### **AFFIRMATIVE AND OTHER DEFENSES**

Colonial Williamsburg avers that each of the following affirmative or other defenses is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Colonial Williamsburg does not implicitly or otherwise undertake any burden of proof or production as to any of these defenses that the law does not otherwise impose.

#### **FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE**

Plaintiff's claim is barred in whole or in part because Plaintiff does not have a disability as defined by the laws under which he sues Colonial Williamsburg.

**THIRD DEFENSE**

Plaintiff's claims are barred in whole or in part because he did not adequately inform Colonial Williamsburg of the nature of his alleged disability and Colonial Williamsburg was not otherwise aware of the nature of his alleged disability.

**FOURTH DEFENSE**

Plaintiff's claims are barred in whole or in part because he did not request a reasonable accommodation from Colonial Williamsburg for his alleged disability.

**FIFTH DEFENSE**

The Court lacks subject matter jurisdiction over some or all of Plaintiff's claims.

**SIXTH DEFENSE**

Plaintiff's claims are barred because Colonial Williamsburg made reasonable accommodations which Plaintiffs unjustifiably rejected.

**SEVENTH DEFENSE**

Plaintiff's claims are barred because Colonial Williamsburg made reasonable modifications to its policies, practices, and procedures in order to accommodate Plaintiff.

**EIGHTH DEFENSE**

Plaintiff's claims are barred because any further modifications to its policies, practices, or procedures on Plaintiff's behalf would have fundamentally altered the nature of the goods, services, facilities, privileges, advantages, and accommodations Colonial Williamsburg offers.

**NINTH DEFENSE**

Plaintiff's claims are barred in whole or in part by the doctrines of waiver, estoppel, consent, injury by fellow servant, and accord and satisfaction.

**TENTH DEFENSE**

Plaintiff's claims fail because all relevant decisions made by Colonial Williamsburg were motivated by legitimate, non-discriminatory factors.

**ELEVENTH DEFENSE**

Each and every action taken by Colonial Williamsburg with respect to Plaintiff was required by law or justified by business necessity.

**TWELFTH DEFENSE**

Plaintiff is not entitled to some or all of the relief requested in the Complaint because Defendant's actions were not malicious, egregious, in bad faith, or in willful or reckless indifference or disregard of any legal rights of Plaintiff.

**THIRTEENTH DEFENSE**

Each and every action taken by Colonial Williamsburg with regard to this matter was undertaken in good faith and in full compliance with all applicable laws, rules, regulations, and agreements.

**FOURTEENTH DEFENSE**

Plaintiff's claims under the Virginia Rights of Persons with Disabilities Act are barred because Colonial Williamsburg is not a covered entity under this statute.

**FIFTEENTH DEFENSE**

Plaintiff has failed to mitigate his damages.

**SIXTEENTH DEFENSE**

Plaintiff is not entitled to punitive damages.

**SEVENTEENTH DEFENSE**

Colonial Williamsburg reserves the right to assert additional defenses as they become known during the course of discovery.

WHEREFORE, Colonial Williamsburg requests that the Court:

- a) Dismiss the Complaint in its entirety with prejudice and enter judgment on Defendant's behalf;
- b) Grant Defendant its costs and attorneys' fees incurred in defending this action; and
- c) For such other and further relief as the Court deems just and proper.

Dated: August 21, 2017

Respectfully submitted,

**COLONIAL WILLIAMSBURG  
FOUNDATION**

By: \_\_\_\_\_ /s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of August, 2017, a true copy of the foregoing was filed with the Court using the CM/ECF system, which will send notification of such filing to the following:

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