



September 10, 2024

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David C. Banks, Chancellor
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Re: NYC Contract with Talkspace, Inc. relating to “Teenspace” Tele-health Program

Dear Mayor Adams, Deputy Mayor Williams-Isom, Chancellor Banks, and Commissioner Vasani:

We are writing to express our deep concerns about the \$26 million contract signed in November 2023 between the NYC Department of Health and Mental Hygiene (“DOHMH”) and Talkspace, Inc. (“Talkspace”) to provide free online counseling and therapy services to NYC teenagers ages 13-17. We are also deeply concerned by the ongoing efforts by the NYC Department of Education (DOE) to promote the use of Talkspace’s newly developed “Teenspace” telehealth app services to NYC public school students.¹

¹ In 2023, the Adams Administration announced that all New York City high school students would be afforded access to mental health support through telehealth programs. *See also* Alex Zimmerman, Chalkbeat, *Mayor Eric Adams promises mental telehealth support for all NYC high school students*,

As students return for a new school year, it is critical that their most private mental health information is protected. We request a meeting and formal review of the City’s Talkspace contract given the sensitive and comprehensive nature of the data collected on NYC teenagers, including during the signup process. This data collection efforts would appear to be in violation, at the very least, of NY Education Law § 2-d. We are concerned, however, that this contract with this provider was entered into with DOHMH, rather than DOE, and this has enabled the evasion of the privacy protections afforded students, and their families, under state and federal student privacy laws.

Potential Violations of State and Federal Privacy Protections

The City cannot absolve itself of its responsibility to provide the protections inherent in federal and state laws, including NY Education Law § 2-d, simply because the contract sits with the DOHMH instead of DOE. The service is promoted on public school websites, and it is DOE’s responsibility to ensure that student data is protected, regardless of which City agency signs the contract. Our numerous concerns about potential violations of state and federal privacy laws inherent to the Teenspace app include the following issues:

- *Before* securing the legally-required consent from parents or caregivers for a child to use the mental telehealth service, children are asked their first name, date of birth, address, school, and a series of questions related to their mental health, including how often they feel stressed, and whether they need help with trauma, sexual problems, and/or drugs and alcohol use. Many of these questions are illegal for schools or their vendors to ask minor students without parental consent or opt out, according to the federal Protection of Pupil Rights Amendment (“PPRA”)²— which is not provided in this case.
- There is a very real concern, based on the number of data security incidents experienced by New York students in the past two years³, that any or all of the sensitive and personal

January 26, 2023, 5:20pm EST: <https://www.chalkbeat.org/newyork/2023/1/26/23573371/eric-adams-telehealth-mental-health-support-nyc-high-school-students/>

This program has been remarkably short on details and the Administration has offered no information at all with respect to questions relating to the use and sharing of sensitive student clinical information; rather the NYC DOHMH webpage has posted a Talkspace FAQ and merely refers all questions to the Talkspace NYC Teenspace website page. See NYC Teenspace: <https://www.nyc.gov/site/doh/health/health-topics/teenspace.page>.

² See United States Department of Education, Student Privacy Policy Office, *SPPO-21-01, Protection of Pupil Rights Amendment (PPRA)*, October 22, 2020: https://studentprivacy.ed.gov/sites/default/files/resource_document/file/20-0379.PPRA_508.pdf.

³ NYC Public Schools Data Security Incidents: <https://www.schools.nyc.gov/about-us/policies/data-privacy-and-security-policies/data-security-incidents>.

data collected by the company could be compromised, misused, and exposed by bad actors. Over one million current and former students were affected by the Illuminate breach.⁴ New York’s students, and their families should be able to expect more thorough vetting of any services that are promoted and offered to the youth and adolescents attending NYC schools.

- Regardless of which City agency has contracted with Talkspace, both DOE and DOHMH must ensure an equal commitment to rigorously protecting student data in line with New York State student privacy protections under Education Law § 2-d, as well as FERPA (Family Educational Rights and Privacy Act) and the PPRA as well as the protections inherent in NY Mental Hygiene Law § 33.13.

Concerning Publicly Available Information Regarding Talkspace Should Have Been Considered Before City Contracting.

The concerns we have about Talkspace’s data collection, privacy policies, and user interface have been well documented.⁵ As part of the City’s vetting process, these issues should have been thoroughly reviewed as they could serve to compromise the trust required by young people and their families to benefit from mental health support. The concerns include the following:

- In 2022, Senators Elizabeth Warren, Cory Booker, and Ron Wyden released a statement⁶ pointing out that Talkspace, as well as another online counseling service, appeared to be taking advantage of the “regulatory gray area” in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) to exploit their patients’ data for profit — something that would not be allowed under Education Law § 2d. The Senators advised the company that “...it appears possible that the policies used by your company and

⁴ “DOE later disclosed that, in addition to the initial notice of almost 800,000 impacted current and former pupils, the vendor had alerted it in October that a much larger number of youngsters had also been victims, bringing in an extra 380,000 pupils for city public schools.” Aldo Domingo, *Personal Data of 1 Million New York Students Hacked: Department of Education: A major data breach*, TechTimes, May 6, 2024: <https://www.techtimes.com/articles/304328/20240506/1-million-new-york-students-personal-data-hacked.htm>.

⁵ Thomas Germain, *Mental Health Apps Aren't All As Private As You May Think*, Consumer Reports, March 2, 2021, <http://ct.symlicity.com/t/wrn/6fdee354a213dc29b320a56ae5800164/2665571418/realurl=https://www.consumerreports.org/health-privacy/mental-health-apps-and-user-privacy-a7415198244/>.

⁶ Oversight Letters: *Warren, Booker, Wyden Call on Mental Health Apps to Provide Answers on Data Privacy and Sharing Practices that May Put Patients’ Data at Risk of Exploitation* *Mental Health Apps Reportedly Collect, Mine, and Disseminate Private Client Information to Big Tech Companies and Data Brokers*, June 23, 2022, <https://www.warren.senate.gov/oversight/letters/warren-booker-wyden-call-on-mental-health-apps-to-provide-answers-on-data-privacy-and-sharing-practices-that-may-put-patients-data-at-risk-of-exploitation>.

similar mental health platforms allow third-party Big Tech firms and data brokers, who have shown remarkably little interest in protecting vulnerable consumers and users, to access and use highly confidential personal and medical information.”

- On April 25, 2023, the Mozilla Foundation⁷ updated its reporting on the company’s privacy policy and data collection practices, including that Talkspace asks potential clients to answer a series of sensitive questions before any account is created and that this information could be used for marketing purposes. The Mozilla Foundation noted in its update that: *“We’re sad to say, Talkspace has not improved their privacy practices since we reviewed them in 2022. If anything, we have more concerns about them this year than last.”*
- The New York Times has reported how transcripts of Talkspace therapy sessions are routinely mined for marketing purposes.⁸

All of this critically important information was readily available to City officials in advance of their engaging with the company and providing the company with unfettered access to the personal data of NYC children.⁹

Lack of Transparency in Talkspace’s NYC Teenspace Product Interface

Neither Talkspace, nor the City, afford students and their families the required transparency to decide on the suitability of the Teenspace service.

As part of the Teenspace sign up flow, the link for students to be able to access the Privacy Policy and Terms of Service is offered only after they have entered a huge amount of personal information, including their data of birth, their address, their gender identity and a long list of potential emotional and mental challenges, [See screenshot in Appendix]. This is an unacceptable usability flaw that denies students a chance to review the privacy policy before providing their personal information.

The Talkspace Privacy Policy¹⁰ makes clear that sign up data can be used for marketing activities, including “tailoring advertising.” Talkspace further makes it clear that “inferences

⁷ **Privacy Not Included: Talkspace*, <https://foundation.mozilla.org/en/privacynotincluded/talkspace/>.

⁸ Kashmir Hill and Aaron Krolik, *At Talkspace, Start-Up Culture Collides With Mental Health Concerns*, New York Times, August 7, 2020: <https://www.nytimes.com/2020/08/07/technology/talkspace.html>.

⁹ We attach an appendix of other publicly available information documenting numerous other concerns about the Talkspace business and its privacy practices.

¹⁰ Talkspace, Privacy Policy, last updated on April 12, 2024: <https://www.talkspace.com/public/privacy-policy>.

derived from information you provide, such as your responses to surveys” can be used for marketing purposes.¹¹

All of this information is collected prior to the student becoming a Teenspace user (and before the student and their family are given an opportunity to opt in to the service). Incredibly, the personal information provided by students can also be used for “mandatory reporting to law enforcement or other governmental authorities.” These provisions do not meet the standards set by Education Law §2-d, and law governing the use of student records under FERPA, the PPRA and NY Mental Hygiene Law, and would not be permissible had the Talkspace contract originated with DOE.

Finally, regardless of whether a child uses the Teenspace service, they are opted in to marketing activities through signing up for the service. Otherwise, they must locate the form on the Talkspace website, complete it and send it in via snail mail to Talkspace to ask to remove their data.¹² Nowhere in the signup flow or material provided by the DOHMH, is it clear that a form must be filled out and submitted to have one’s data deleted. It also states on the form that even if the company asks third parties to delete data it may not be successful: *“We will contact our advertising affiliates regarding your request but this may not prevent randomized advertisements sent via third-party agencies.”*

Questions About Due Diligence

Providing mental health support to teens is important, but the amount of information available regarding Talkspace makes it unlikely that it would have been the best choice to serve the children of our city. In addition to the concerns outlined above:

- Talkspace has received terrible reviews from users, which does not inspire trust from families who might seek out information regarding the experience that other users have had with the Talkspace platform.¹³
- There have been several lawsuits filed against Talkspace claiming that the company bills users even when they have not made appointments and/or received services.¹⁴

¹¹ *Id.*

¹² Talkspace - Data Information Removal/Deletion Form_ June 2024: https://help.talkspace.com/hc/en-us/article_attachments/26369874797851.

¹³ Better Business Bureau, Customer Reviews for Talkspace Mental Health Services: <https://www.bbb.org/us/ny/new-york/profile/mental-health-services/talkspace-0121-149740/customer-reviews>.

¹⁴ Thomas Germain, *Talkspace Allegedly Ignores Your Therapy Needs and Charges for Sessions You Aren’t Getting. A new lawsuit says the company doesn’t staff enough therapists to meet demand and uses dark patterns to trick patients into costly recurring subscriptions.* Gizmodo, March 2, 2023: <https://gizmodo.com/talkspace-secretly-charges-therapy-you-dont-get-lawsuit-1850170411>.

- Although the Talkspace-generated FAQ¹⁵ posted on the NYC.gov website indicated that Teenspace “*client data is encrypted both when sitting in the database and when being transmitted to or from your teen’s device,*” we cannot find these same assurances on Talkspace’s Privacy Policy page. It is worryingly inconsistent and unclear if the same protections apply to the third-party marketing partners used by Talkspace, which would be required under Education Law § 2d if the contract were with DOE
- Talkspace recently hired Oaktree Solutions, run by Frank Carone, Mayor Adams’ former chief of staff, to lobby for more city contracts.¹⁶

Again, we urge you to immediately make the City contract with Talkspace publicly available, and to meet with us to address the issues we have identified with the Teenspace service.

Sincerely,

Leonie Haimson

Co-chair, Parent Coalition for Student
Privacy

Beth Haroules

Senior Staff Attorney
New York Civil Liberties Union

Shannon Edwards

Founder, AI for Families

Stefanie Coyle

Deputy Director, Education Policy Center
New York Civil Liberties Union

Cc: NYC Comptroller Brad Lander

¹⁵ *About Talkspace: Frequently Asked Questions for Parents and Guardians:*
<https://www.nyc.gov/assets/doh/downloads/pdf/mh/teenspace-faq-parents-guardians.pdf>.

¹⁶ Amanda D'Ambrosio, *Talkspace inks \$10K monthly lobbying contract with Frank Carone’s consulting firm*, Crains, May 2, 2024: <https://www.crainsnewyork.com/health-pulse/talkspace-hires-frank-carone-oaktree-solutions-10k-month-lobbying-deal>.

APPENDIX: ADDITIONAL RESOURCES DEMONSTRATING TALKSPACE CONCERNS

- [Therapy app Talkspace allegedly data-mined patients' conversations with therapists](#)
- [At Talkspace, Start-Up Culture Collides With Mental Health Concerns \(Published 2020\)](#)
- [Therapy app Talkspace mined user data for marketing insights, former employees allege](#)
- ['Creepy' Mental Health And Prayer Apps Are Sharing Your Personal Data](#)
- [Mental health apps are still failing their privacy checkups](#)
- [Mental health apps may put your privacy at risk. Here's what to look for](#)
- [Talkspace Allegedly Charges You for Therapy You Don't Get](#)
- [Talkspace class action claims company does not have enough therapists to meet demand](#)
- [These Mental Health Apps Are Collecting Data On You](#)
- [AI might be listening during your next health appointment](#)
- [Mental health apps draw wave of new users as experts call for more oversight](#)

What do you need support with?

Select all that apply

Anxiety or worrying
Sadness or depression
Body image or eating habits
Racial, ethnic, or cultural identity
Gender identity
Becoming my best self
Traumatic experience
Drug or alcohol use
Social media use
Difficulties at school
Difficulties at home or with family
Concentration or focus
Improving my relationships
Grief, loss, or tough transitions
Bullying
I'm not sure
Other