



**NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE**
Ashwin Vasan, MD, MPH
Commissioner

Lisa Landau
General Counsel

Gotham Center
42-09 28th Street, 14th
Floor
Queens, NY 11101-4132

llandau@health.nyc.gov
+ 1 347 396 6116 tel

Leonie Haimson
Co-chair, Parent Coalition for Student
Privacy

Shannon Edwards
Founder, AI for Families

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Beth Haroules
Senior Staff Attorney
New York Civil Liberties Union

Stefanie Coyle
Deputy Director, Education Policy
Center
New York Civil Liberties Union

Re: DOHMH Teenspace Program

Dear Ms. Coyle, Ms. Edwards, Ms. Haimson and Ms. Haroules:

This letter provides the New York City Department of Health and Mental Hygiene’s (DOHMH) response to the issues raised in your recent letter, dated September 10, 2024, with respect to DOHMH’s Teenspace program, which provides needed mental health services to New York City (NYC) teenagers aged 13-17.

In New York City, we are seeing concerning trends in youth mental health. Between 2011 and 2021, the percentage of NYC public high school students who reported feeling sad or hopeless increased from 27% to 38%, with girls, Black and Latino students, and lesbian, gay or bisexual students more likely to report feeling this way. Furthermore, we are observing alarming increases in suicide ideation among youth. The percentage of NYC public high school students who reported seriously considering suicide in the past 12 months increased from 12% in 2011 to 16% in 2021. Despite the fact that NYC teens are experiencing worsening mental health, they are not always able to access care in a timely way. Nearly one in four teens (24%) said that sometime in the past 12 months, they had needed or wanted mental health care but did not get it. Teenspace was explicitly designed to address these alarming trends.

Teenspace’s service has been very well received. In less than one year since its inception, Teenspace has provided confidential services to more than 16,000 young people across NYC. All services are provided by New York State (NYS) licensed providers who are subject to the same patient and privacy protections, including HIPAA and NYS Mental Hygiene Law, as any other licensed practitioner in the state. Through its contract with Talkspace, DOHMH has also taken additional steps to protect the data of Teenspace users

and ensure information is not collected for monetary gain, including provisions that require all client data to remain confidential during and after the completion of the city's contract and specifically prohibiting the use of data for any purpose other than providing the mental health services included in the contract.

I. Teen Data/Information is Protected by HIPAA, NYS Mental Health Law, and DOHMH's Contract with Talkspace.

DOHMH has established the Teenspace program as one important avenue to address the high rates of depression and anxiety experienced by NYC teens. And while the promotion of the program is through both public and non-public schools, the information associated with the program are not "education records" and are thus not protected by the laws that you set out in the first two pages of your letter. They are, however, medical records that are protected by federal and state medical privacy laws. And they are further protected through the provisions of DOHMH's contract with Talkspace.

a. HIPAA protects the personal data collected by Talkspace.

As a provider of mental health treatment, Talkspace is required to comply with the Health Insurance Portability and Accountability Act (HIPAA), which means that Talkspace must ensure the privacy and security of the personal data that it collects during mental health treatment, as any other NYS health provider would. Talkspace may not use or disclose data without consent unless an exception is authorized by the HIPAA Privacy Rule. Talkspace is further required by the HIPAA Security Rule to maintain appropriate security of its app and website to protect against unauthorized access to the data.

b. Talkspace must comply with the privacy protections in NYS Mental Hygiene Law § 33.13.

Talkspace is also required to adhere to New York Mental Hygiene Law for the information that it collects from teenagers in order to provide mental health treatment. NYS Mental Hygiene Law § 33.13 prohibits the disclosure of mental health records except in very limited circumstances. Talkspace will not disclose teens' data for marketing purposes.

c. DOHMH data protections for teens exceed federal and state statutory protections of teen data through its strong contractual requirements with Talkspace.

DOHMH has independent authority under the New York City charter and New York State Mental Hygiene Law to contract with organizations to provide mental health services in New York City. [NYC Charter, Chapter 22, Section 56](#); [NYS Mental Hygiene Law, Section 41.07](#). DOHMH exercised this authority in contracting with Talkspace to provide mental health therapy and related services to teens in a time of undeniable need. The contract with Talkspace contains contractual terms to protect the privacy and security of teens' data. Indeed, DOHMH's contract specifically allows Talkspace to disclose information only for the purposes of providing mental health services and protects teen data even before the

mental health services begin. DOHMH's contract with Talkspace ensures that all NYC teenagers, regardless of whether they attend public or private school, or are not school-enrolled, will have access to mental health services. Here are some of the protections included in the Talkspace contract:

- The contract requires Talkspace to ensure the privacy and security of the data, and to further protect against unauthorized or illegal or accidental disclosure or use of the data. The contract also requires Talkspace to maintain the data in accordance with all applicable laws, which include HIPAA and the state Mental Hygiene Law. Additionally, Talkspace must ensure the proper disposal of the data.
- The contract specifically forbids Talkspace from using the personal data for any purpose other than to provide its' mental health services to teens. Talkspace is not allowed to disclose personal data unless it obtains written authorization from a parent. The contract also obligates Talkspace to destroy personal data within 30 days after request by DOHMH. If it is impossible for Talkspace to destroy the personal data, Talkspace must immediately stop accessing or using the data, and must maintain the data in accordance with the privacy and security provisions of the contract.
- The privacy and security provisions in DOHMH's contract with Talkspace override the statements in the Talkspace privacy policy and terms of use and such policy and terms by Talkspace do not apply to the teens and parents that sign up for the free services provided by Talkspace pursuant to the contact. Again, Talkspace is not allowed to use or disclose the personal data for marketing purposes. Talkspace has expressly agreed that it will not use any of the personal data for marketing purposes. DOHMH is working with Talkspace to clarify to teens and parents that their data is protected by DOHMH's contract.

As a public record, the contract between DOHMH and Talkspace is readily available for members of the public to review.

d. FERPA does not apply because data provided by NYC teenagers are not "education records."

The Federal Educational Records Rights and Privacy Act (FERPA) protects the privacy of student *education records*. FERPA applies to an educational agency or institution that receives funds from the U.S. Department of Education (US DOE). [34 CFR § 99.1\(a\)](#). FERPA does not apply in this case because neither DOHMH nor Talkspace is an educational agency or institution. Therefore, the personal data of teens collected by Talkspace is not subject to the federal or state requirements for education records found in FERPA.

Additionally, FERPA’s protections only extend to education records. Education records are records which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such educational agency or institution. [20 USC § 1232g\(a\)\(4\)](#). Data collected by Talkspace does not constitute student education records because it is not maintained by the New York City Department of Education (NYC DOE), or by a person acting for NYC DOE. Talkspace is not acting on behalf of NYC DOE or providing any services to NYC DOE. DOHMH has a contract with Talkspace and DOHMH has engaged NYC DOE to inform students and parents of the mental health services provided by Talkspace. DOHMH is not acting for NYC DOE because it is not providing any services to NYC DOE. Talkspace is providing services directly to NYC teenagers aged 13-17.

Finally, the US DOE and the U.S. Department of Health and Human Services have provided guidance on the application of FERPA to student health records. The [joint guidance](#) states that “student health records that are maintained by a health care provider that provides services directly to students and that is not acting for a FERPA-covered educational agency or institution **do not constitute FERPA-protected education records.**” As mentioned above, Talkspace is providing services directly to NYC teenagers and is not acting on behalf of a FERPA-covered educational agency or institution.

e. NYS Education Law § 2-d does not apply because DOHMH and Talkspace are not educational agencies or third-party contractors covered by NYS Education Law.

Similarly, NYS Education Law does not apply here. NYS Education Law § 2-d defines an educational agency as “a school district, board of cooperative educational services, school, or the education department,” and a third-party contractor as any person or entity “that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency.” [NYS Education Law §§ 2-d\(1\)\(c\) and \(k\)](#). DOHMH and Talkspace are not educational agencies. Additionally, DOHMH and Talkspace are not third-party contractors because NYC DOE is not providing any student or teacher or principal data to DOHMH or Talkspace. The data comes directly from NYC teenagers. Additionally, DOHMH and Talkspace are not providing any services to NYC DOE. Talkspace is a mental health resource available to NYC teenagers, regardless of their school enrollment status.

f. PPRA does not apply because DOHMH and Talkspace are not state or local educational agencies.

The Protection of Pupil Rights Amendment (PPRA) applies to any program administered by the U.S. Secretary of Education, or state and local educational agencies. [38 CFR § 98.1](#). DOHMH and Talkspace are not covered by PPRA because they are not state or local educational agencies.

II. DOHMH Conducted Due Diligence Prior to Entering into a Contract with Talkspace.

In providing the Teenspace program, DOHMH sought to provide an avenue of support for teens during a historic teen mental health crisis. DOHMH carefully considered various vendors for the Teenspace project before selecting Talkspace.¹ The vendor assessment process was a detailed one, which posed targeted questions to qualified vendors, included reference checks with different jurisdictions, and considered organizational capability as well as any negative publicity associated with the vendors under consideration. Privacy and confidentiality protections were a particular focus of the assessment process.

As the preeminent health agency in the country, DOHMH is dedicated to supporting the mental health of all New Yorkers. Just this year, DOHMH took part in a landmark [lawsuit](#) to hold social media platforms accountable for fueling a youth mental health crisis. *See City of New York v. Meta Platforms, Inc.*, No. 24STCV03643 (Cal. Super.).

As explained above, although DOHMH and Talkspace are not subject to FERPA, NYS Education Law § 2-d, or PPRA, the records are protected by HIPAA, NYS Mental Health Law and a contract with strong protections. Through these mechanisms, DOHMH is confident that it has ensured that Talkspace will keep NYC teens' data safe and secure. That said, we will continue to work with Talkspace to address specific parent concerns regarding their children's data. Please feel free to reach out to either of us if you would like to discuss any of the above.

Sincerely,

/s/

Lisa Landau
General Counsel

/s/

Nicholas Elcock
Chief Privacy Officer

cc: Toni Gantz, NYC Department of Education
Dennis Doyle, NYC Department of Education

¹ Notably, the events of 2022 raised in your letter culminated in the Federal Trade Commission (FTC) imposing multimillion dollar fines on two other telehealth mental health provider companies. On the other hand, we are not aware of Talkspace being investigated by the FTC.