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Lisa Landau, General Counsel  
New York City Department of Health  
and Mental Hygiene  
Gotham Center, 14th floor  
Queens, NY 11101-4132  
[llandau@health.nyc.gov](mailto:llandau@health.nyc.gov)

Nicholas Elcock, Chief Privacy Officer  
New York City Department of Health  
and Mental Hygiene  
Gotham Center, 14th floor  
Queens, NY 11101-4132  
[nelcock@health.nyc.gov](mailto:nelcock@health.nyc.gov)

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

Dear Ms. Landau and Mr. Elcock:

Thank you for your September 23, 2024 response to our September 10 letter in which we raised a number of our serious concerns about the “Teenspace” tele-health services that the City has made available to NYC public school students and has encouraged them to use, among other means, through frequent public statements and press events.

We agree that all young people in New York City should be able to access the health care they need to grow and thrive. This has never been more critical, since the start of the ongoing COVID pandemic, as children and adolescents have experienced a documented crisis in mental health.<sup>1</sup>

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<sup>1</sup> See, e.g. United Hospital Fund, *National Analysis Reveals Growing Adolescent Behavioral Health Crisis, Rising Unmet Need—and the Ripple Effects on Education, Family Economics, Health, and Productivity*, available: <https://uhfnyc.org/news/article/national-analysis-reveals-growing-adolescent-behavioral-health-crisis.-s-rising-unmet-needand-the-ripple-effects-on-education-family-economics-health-and-productivity/>; see also U.S. Surgeon

But the City has an obligation to ensure that our young people's private information is protected and further, that their privacy rights are not undermined for the purpose of predatory marketing and other commercial purposes which could further undermine their mental health.<sup>2</sup>

For the reasons set forth in our original letter, and below, we continue to believe that the City is facilitating the ongoing and significant violation of NYC students' data privacy rights. We also now believe, as we explain below, that there are significant violations of the student data privacy protections provided in the DOHMH contract with Talkspace dated October 1, 2023 (the "Talkspace Contract").<sup>3</sup> We urge the City to take immediate steps to safeguard NYC students' sensitive mental health information.

### ***Talkspace Shares Personal Mental Health Information of All its Website Visitors and Users***

After we sent our September 10<sup>th</sup> letter, we learned that Talkspace has been sued in California for sharing the personal mental health information of their website visitors and users, including that of minors, with TikTok, in a lawsuit entitled *Mitchener v. Talkspace Network LLC*.<sup>4</sup> Among other things, the lawsuit alleges that:

“when a user is prompted to input their name, date of birth and address into Talkspace.com, that information is simultaneously sent to TikTok so the company can isolate with certainty the individual to be targeted.”<sup>5</sup>

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General's Advisory, *Protecting Youth Mental Health* (Dec. 2021), available: <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>.

<sup>2</sup> Talkspace is quite frank about the fact that its business strategy relies heavily on exploiting its partnerships, such as the one they have entered into with the City, to keep marketing costs in check. In their Q4 2024 investors' call they spoke about this change in strategy. *"In the Direct to Enterprise category, second quarter revenue was \$9.6 million, up 20% from last year, driven by our teens contracts such as New York City and Baltimore County schools. Sequentially, DTE revenue was down 3% as a result of the timing of new contract wins we discussed last quarter. As a reminder, our pipeline remains robust with selling cycle times for new wins, especially in the teen space, have remained elongated."* (Investor call, August 6, 2024) <https://investors.talkspace.com/static-files/c8a73907-5e5d-45db-b6c1-537242634765>.

<sup>3</sup> Leonie Haimson has just received the DOHMH contract with Talkspace dated October 1, 2023 (the "Talkspace Contract"), in response to her FOIL request to DOHMH. The document we received is denominated as an "Agreement Between The City Of New York Department of Health and Mental Hygiene and Talkspace Medical Services NY PC" with an "effective date" as of October 1, 2023. We are attaching a copy of the document we have received in response to that FOIL response for your convenience.

<sup>4</sup> See *Mitchener v. Talkspace Network LLC*, U.S. District Court, Central District of California, 2:24-cv-07067, <https://www.classaction.org/news/talkspace-lawsuit-claims-therapy-website-secretly-shares-user-data-with-tiktok>.

<sup>5</sup> Corrado Rizzi, *Talkspace Lawsuit Claims Therapy Website Secretly Shares User Data with TikTok*, Class Action.Org, August 30, 2024, <https://www.classaction.org/news/talkspace-lawsuit-claims-therapy-website-secretly-shares-user-data-with-tiktok/>.

We conducted our own analysis of the Teenspace website, to which NYC students are steered by the City, where they are asked to fill out their date of birth and address, as well as a detailed mental health survey. Using the Blacklight privacy audit tool,<sup>6</sup> we discovered that when a NYC student visits these webpages on their phones, their personally identifiable information is automatically shared with 15 ad trackers and 34 cookies, as well as Facebook, Amazon, Meta, Google, and Microsoft among other companies.

We then consulted a company that provides expert advice to businesses on how to improve their data privacy practices. That company found an even higher level of surveillance and sharing of information by Talkspace. They reported to us that the domains where NYC teens begin (<https://www.talkspace.com/coverage/nyc>) and then are directed (<https://match.talkspace.com>) feature even more invasive trackers and cookies (61 in total), including TikTok, Meta, and, Snapchat. They could not ascertain whether the data collected from students once they have signed on as clients/patients is any better protected from further disclosure and misuse. The CEO of this company told us that the website of any company like Talkspace that deals with the sensitive mental health information of NYC students should not contain any trackers or cookies.

Talkspace CEO, Dr. Jon Cohen, has been open about how the use of ad trackers and cookies are core to the business's strategy:

"The company [...] seeks to optimize its advertising and marketing spend by investing in tracking data. Sales and marketing spending has been a pain point for Talkspace in the past."<sup>7</sup>

### ***The Talkspace Contract Facilitates Social Media's Role in the Youth Mental Health Crisis***

Earlier this year, DOHMH Commissioner Vasan and Chancellor Banks announced a lawsuit against TikTok, Instagram, Facebook, and Snapchat, seeking to hold those social companies responsible for their role in worsening the youth mental health crisis.<sup>8</sup> In that lawsuit, the City charges that the social media company defendants "harvest a vast amount of personal user data—from the school you attend, to the sneakers you covet, to the places you've been and the people you've met. This, in turn, has allowed Defendants to mint a fortune, by selling to others the ability to micro-target advertisements to incredibly narrow slices of the public."<sup>9</sup>

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<sup>6</sup> The Markup is a nonprofit newsroom that investigates how powerful commercial entities use technology to mold society. The Markup runs a special project called Blacklight; <https://themarkup.org/blacklight>. See The Markup, *Blacklight*, <https://themarkup.org/blacklight>.

<sup>7</sup>Chris Larson, *Talkspace Hits 'Inflection Point' as B2B Becomes Dominant Revenue Driver*, Behavioral Health Business, February 22, 2023, <https://bhbusiness.com/2023/02/22/talkspace-hits-inflection-point-as-b2b-becomes-dominant-revenue-driver/>.

<sup>8</sup> See *Mayor Adams Announces Lawsuit Against Social Media Companies Fueling Nationwide Youth Mental Health Crisis*, February 14, 2024, <https://www.nyc.gov/office-of-the-mayor/news/125-24/mayor-adams-lawsuit-against-social-media-companies-fueling-nationwide-youth-mental-health#0>.

<sup>9</sup> See Complaint § 11.

Talkspace is an active partner in this data harvesting and micro-targeting ecosystem described by the City’s lawsuit. The City’s Talkspace Contract facilitates Talkspace’s “minting its own fortune” by sharing student information it obtains from the students accessing their Teenspace services to facilitate this “micro-targeting” of advertisements by the social media company named as defendants in the City’s lawsuit.

The City is not the only government actor suing to prevent social media entities from inappropriately commercializing young people’s data. Just last week, Attorney General Letitia James joined with 14 other state Attorneys General, suing TikTok, alleging that TikTok cultivates social media addiction to boost corporate profits by maximizing their revenue from targeted ads.<sup>10</sup> As we have noted, Talkspace shares the information they harvest from NYC students with TikTok and other social media platforms for these very purposes.

***Facilitation of Students’ Personally Identifiable Information in Violation of Education Law § 2-d***

NY Education Law § 2-d, and its regulations prohibit the facilitation of the use or disclosure of students’ personally identifiable information by any other party for any marketing or commercial purpose.<sup>11</sup> Yet, you have claimed at length in your letter that the privacy protections of NY Education Law § 2-d as well as the federal Protection of Pupil Rights Amendment, or PPRA, cannot apply to the Talkspace Contract, because the Talkspace Contract has been structured to be a contract with DOHMH rather than DOE.

However, DOE and NYC school websites urge students both to use Teenspace services and directly link to the Talkspace website where students’ personal information is captured, processed and further disclosed. For example, Chancellor Banks has frequently directed NYC students to take advantage of Teenspace services in speeches and presentations, including in his September 17, 2024 State of the Schools address. DOE has also repeatedly advertised Teenspace services on social media, including Facebook and Instagram. The websites of DOE and those of individual schools have also directly, and prominently, linked to the Teenspace website, encouraging students to visit the website and fill out their information.<sup>12</sup>

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<sup>10</sup> See *Attorney General James Sues TikTok for Harming Children’s Mental Health*, October 8, 2024, <https://ag.ny.gov/press-release/2024/attorney-general-james-sues-tiktok-harming-childrens-mental-health>.

<sup>11</sup> Specifically, the Education Law, and its regulations, provide that “Educational agencies shall not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so. See NY Ede Law § 2-d(4)(f) and 8 NYCRR 121.2.

<sup>12</sup> See e.g. Chancellor Banks, State of the Schools address, Sept. 17, 2024 at <https://www.is281.com/apps/news/article/1967361> See also NYC Department of Education Back to School Countdown, September 1, 2024, Facebook post at <https://www.facebook.com/photo/?fbid=989347349899196&set=a.306483211518950> and Instagram post at [https://www.instagram.com/nycschools/p/C\\_YoZEYPAp5/?locale=zh\\_tw&hl=en](https://www.instagram.com/nycschools/p/C_YoZEYPAp5/?locale=zh_tw&hl=en) . Individual schools have also linked to Teenspace on their websites, see <https://www.fdrhs.org/apps/news/article/1853650> and [https://psis-104-the-fort-hamilton-school.echalksites.com/nyc\\_teenspace](https://psis-104-the-fort-hamilton-school.echalksites.com/nyc_teenspace). The DOE website itself linked to the Teenspace website

We believe it clear that DOE and school officials have repeatedly facilitated students' use of Teenspace by means of public statements and website links in violation of Education Law § 2-d.

***Apparent Violations of the DOHMH Talkspace Contract, including Violations of the New York City Identifying Information Law***

As noted above, we have finally been able to review the DOHMH Talkspace Contract. The Talkspace Contract itself does not explicitly bar the use of personal information for commercial or marketing purposes, as would be required if it were to comply with NY Education Law § 2-d.

However, the Identifying Information Law Rider to the Talkspace Contract prohibits Talkspace from its predatory commercial practices.<sup>13</sup> The Identifying Information Law Rider to the Talkspace Contract mandates that any personal data collected from NYC students must only be used and/or disclosed for the purpose of providing the mental health tele-health services that Talkspace is contracted to deliver to New York City students.<sup>14</sup>

It is apparent to us that Talkspace has already collected and disclosed a large amount of personal student data for its own commercial benefit. This collection and disclosure is contrary to the NYC Identifying Information Law and has absolutely nothing to do with the delivery of mental health tele-health services to NYC students.

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until at least Sept. 25, 2024 according to the archived version at <https://web.archive.org/web/20240925141707/https://www.schools.nyc.gov/school-life/health-and-wellness/mental-health> The Mayor's office also repeatedly posts on X, promoting the services, as recently as October 7, with a video, <https://twitter.com/NYCMayorsOffice/status/1843326207787741305>.

<sup>13</sup> The Identifying Information Rider obligates Talkspace to comply with the NYC "Identifying information Law" at NYC Admin Code 23-1201-1205, <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAadmin/0-0-0-42878>.

<sup>14</sup> HIPAA contemplates serious restrictions of a covered entity's ability to engage in marketing of patient information without an individual's consent. See 45 CFR 164.501, 164.508(a)(3). The NY Mental Hygiene Law does not permit marketing of any patient information. See MHL § 33.13, We are concerned, however, about the contours of privacy and patient protections that apply to the Talkspace/Teenspace platform on which a licensed professional operates during the course of their delivery of confidential services to youth and adolescents in New York City. The Talkspace platform claims to "handle insurance billing, marketing and admin costs," and, accordingly, must comply with the HIPAA Privacy Rule, <https://telehealth.hhs.gov/providers/telehealth-policy/hipaa-for-telehealth-technology#:~:text=HIPAA%2Dcompliant%20technology.comply%20with%20the%20HIPAA%20Rules>.

Moreover, Tele-health services must be provided pursuant to Article 31 of New York State (NYS) Mental Hygiene Law and providers must be designated or otherwise authorized by the NYS Office of Mental Health (OMH) to provide services that are approved to utilize tele-health pursuant to Part 596. See *April 2023 Telehealth Services Guidance for OMH Providers*, <https://omh.ny.gov/omhweb/guidance/telehealth-guidance.pdf>. Yet the Talkspace platform is not a "facility" licensed by the New York State Office of Mental Health ("OMH") and Talkspace/Teenspace is not a "provider" licensed by OMH. Thus, it is unclear whether the NY Mental Hygiene Law or OMH regulations, including OMH's tele-health regulations at 14 NYCRR Part 586, would even apply to Talkspace and the "virtual" office space it provides mental health professionals who end up in a patient relationship with NYC students.

We urge you to demand that Talkspace take down their website immediately, and delete any personal data collected from NYC students that is not used solely to provide them with mental health services. We believe that notifications should be immediately provided to all those students and their families whose data has been inappropriately used and further disclosed. We further urge the City to take all legal recourse available under the terms of the DOHMH contract with Talkspace.

### ***Renewed Meeting Request***

We have a number of questions and concerns relating to both your letter and the contractual documents we have received. As previously expressed, we would like to meet with you as well as appropriate personnel from the Mayor's office and the DOE so that we can discuss these serious issues. We believe this meeting is even more urgent to prevent the continued predatory data capture and monetization of NYC student data by Talkspace.

In one of the articles reporting on our letter, a DOHMH spokesperson said that "the Health Department is in the process of setting up an independent evaluation to review the program and will work in good faith with anyone who brings us their concerns."<sup>15</sup> We are available to immediately work with you to help in these efforts in any way possible.

We look forward to your timely response.

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: Mayor Eric Adams  
Anne Williams-Isom, Deputy Mayor for Health and Human Services  
Melissa Aviles-Ramos, Chancellor, NYC Department of Education  
Toni Gantz, NYC Department of Education  
Dennis Doyle, NYC Department of Education  
Muriel Goode-Trufant, Acting Corporation Counsel  
Brad Lander, NYC Comptroller  
Attorney General Letitia James

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<sup>15</sup> Keely Quinlan, *Privacy advocates are concerned by NYC's online teen counseling service*, StateScoop, September 11, 2024, <https://statescoop.com/privacy-advocates-nyc-teen-counseling-talkspace/>.