

ANNA MARIA PASSASEO
Editor

CURRENT ISSUES
IN MORAL MATTERS

A Call for Education



MESSINA
UNIVERSITY
PRESS

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IN MORAL MATTERS**

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THE MORAL CONTEXTS OF MEDIATION
WITH THE PARTICIPATION OF YOUTH.
ON THE EXAMPLE OF POLAND

Agnieszka Lewicka-Zelent
Full Professor of Psychopedagogy
Maria Curie-Skłodowska University in Lublin

Agnieszka Markiewicz-Gospodarek
Research Assistant in Medical Sciences
Medical University of Lublin

Anna Maria Passaseo
Associate Professor of General and Social Pedagogy
University of Messina

SUMMARY: 1. Introduction. – 2. Mediation in juvenile matters. – 3. Mediation in schools. – 4. Academic mediation. – 5. Values of youth mediation. – 6. Conclusions.

1. Introduction

Mediation is approached from different perspectives. Most often, its legal dimension is shown. Indeed, it is difficult to talk about it without referring to normative acts in a given country. For this reason, this article will focus on the moral context of mediation with the participation of young people, based on the provisions of Polish law. It was decided to familiarise the readers with the legal possibilities of young people's participation in mediation in juvenile cases, school mediation and academic mediation, and then to consider the ethical aspects of mediation and its educational dimension.

Regardless of the manner in which the mediation is conducted, of the people involved, each mediator is obliged to follow the golden rules of mediation that increase the likelihood of achieving a satisfactory solution for all concerned. In turn, mediation participants should voluntarily enter the mediation and keep any information gained

to themselves. This means that adherence to these principles is a fundamental ethical requirement for conducting any mediation. The most important principles have been collected in one document - the Code of Ethics for Polish Mediators, prepared by the Social Council for Alternative Methods of Resolving Conflicts and Disputes (the Council) under the Minister of Justice in May 2008¹

The purpose of developing the document was to maintain the highest ethical standards for mediators, to inspire confidence in mediation among Poles, and to set out some rules for mediating in difficult situations (the function of the handbook). It is based on the ethical values of the mediation profession.

The Council has set out 12 key principles. According to them, a mediator is obliged to conduct mediation proceedings taking into account the autonomy and independence of the participants, their interests and needs, according to the principles of voluntariness, confidentiality and impartiality.

He or she should ensure that they are equipped with knowledge of the nature of mediation, how it takes place, the role of the mediator and the terms of the agreement, but also his or her professionalism, which implies the need to constantly improve his or her competence.

He or she should consciously agree to participate in the mediation, considering his or her skills sufficient for a satisfactory conclusion of the case, avoiding conflicts of interest with the participants.

He or she should provide them with reliable information on the costs associated with the mediation procedure, which is a single remuneration (he or she must not derive additional benefits).

Young people, called minors in Poland, do not have legal capacity, which does not mean that they cannot be participants in mediation: in juvenile, school and academic cases. Therefore, these types of mediation are focused on in the following part of the article, the aim of which is to show the moral aspects of these mediations.

¹ <https://www.gov.pl/web/sprawiedliwosc/dokumenty-i-deklaracja-o-stosowaniu-mediacji> (access date: 13.08.2023).

2. Mediation in juvenile matters

Until the first half of last year, mediation in juvenile matters was regulated by the Act on Proceedings in Juvenile Matters² of 1982, in which the first provisions on the possibility for minors to participate in mediation were introduced in 2000. At present, in Polish law, a juvenile is a person who is demoralised between the ages of 10 and 18, who has committed a criminal act after the age of 13 but before the age of 17, and a person in respect of whom educational, therapeutic or corrective measures have been applied, but no longer than until the age of 21³.

In the Act of 9 June 2022 on the Support and Rehabilitation of Juveniles, one of the articles is dedicated to mediation proceedings⁴. According to this legislation, it is the family court that can refer the juvenile and the victim to mediation, either on their initiative or with their consent. Their voluntary consent is taken by the family court or the mediator. It is preceded by an explanation to the minor and the victim of what mediation is and what principles it follows, as well as the right to withdraw from the proceedings without giving any reason. This means that they enter into mediation in an informed manner, equipped with the necessary knowledge, although, in view of the age of the minor, the meetings are attended by his or her parents or the actual legal guardian, as well as by the legal representative of the victim or the person in whose custody the victim has been placed.

Customarily and legally, it is the minor who undertakes to compensate for the harm suffered or to repair the damage, although the conclusion of a settlement by the minor requires the consent of his or her legal representative. This is in line with the principle of the child's welfare, which is paramount in Polish family and guardianship law.

The minor assumes responsibility for the reprehensible behaviour and learns to bear the consequences for his/her behaviour, which is the ultimate (educational) effect of mediation. However, it is possible that the minor's legal guardian makes a certain

² Journal of Laws of 1982 No. 35, item 228.

³ Journal of Laws of 2022.0.1700, Art. 1. 1.

⁴ Journal of Laws of 2022.0.1700, Art. 57.

commitment in the settlement agreement, e.g. he or she would like to hand over money to the wronged party, and the minor cannot do so due to his or her age. From an educational point of view, this is safe and appropriate insofar as it does not abolish the juvenile's sense of responsibility for the harm or damage caused.

The duration of mediation is a maximum of six weeks, which seems fair from the point of view of its effectiveness. Too short time would often make it impossible to complete the mediation, if only because of independent factors such as the illness of the mediation participant. The longer time, on the other hand, could demotivate them to actively seek a satisfactory solution to the conflict.

In order to carry out the mediation procedure effectively, the mediator shall acquaint himself with the necessary documents. However, he or she does not have access to materials to which the obligation of secrecy of classified information or professional or functional secrecy extends, related to the minor's state of health, opinions about him or her and criminal record data.

Such a solution is, on the one hand, understandable in view of the confidentiality of relevant data, however the intermediary is deprived of important information from the point of view of the effectiveness of the mediation. One question is whether it is ethical not to have information that the mediation participant is dangerous, with serious mental disorders, with psychopathic personality, etc.?

The outcome of the mediation proceedings is relevant to the outcome of the trial, as the court, when deciding the case, takes into account the effects of the mediation contained in the reached settlement agreement.

From a pedagogical perspective, juvenile mediation is an opportunity for the juvenile to take corrective action, an initiatory stage of readiness to change behaviour, through an understanding of the violated rights of the victim, a process of empathising with and taking responsibility for the victim, and the restoration of a sense of justice in the mediation participants.

3. Mediation in schools

Until recently, the conduct of mediation in schools was not regulated in any way in Poland.

Most often, school principals coped in such a way that they added provisions to the prevention and education programme allowing mediation meetings to be conducted at school with the participation of students, teachers and parents. This situation was changed by the Regulation of the Minister of National Education of 9 August 2017 on the principles of organising and providing psychological and pedagogical assistance in public kindergartens, schools and institutions⁵. The Ministry recognised that one of the tasks of an educator and psychologist in a kindergarten, school and institution is to "initiate and conduct mediation and intervention activities in crisis situations." This means, therefore, that from now on, in a "legal" way, schools can and even have to undertake various activities for the promotion and implementation of mediation with minors.

This does not mean, however, that mediation was not carried out in schools until 2017. Attempts were made to implement original programmes, although many of them did not end up being evaluated and their success rates are unknown. The first comprehensive school mediation programme described in the literature and evaluated was the programme "Mediation at School" by A. Lewicka-Zelent. Its implementation began in 2007 as a result of a reflection on the need to resolve conflicts on school premises - rather than in court as a juvenile case. It was implemented for two years throughout the school community. Many desirable changes were achieved from it.

At the end of the first phase of the programme to develop the social competences of the students who were preparing to be peer mediators, it was found that the young people rated their self-confidence, consistency in action, creativity, sense of justice, sense of responsibility, honesty, discretion higher. On the basis of standardised tests,

⁵ Journal of Laws of 2017, item 1591, Article 24, point 6.

results were obtained indicating an increase in pro-social attitudes, empathic imagination, and empathic response to other people's negative experiences⁶.

After the second stage of the programme aimed at developing the mediation competences of adolescents, statistically significant changes were observed in terms of: pro-social attitude, empathic response to negative experiences of other people, empathic response in difficult situations and mediation competences. Programme participants rated higher: their self-confidence, personal culture, honesty, openness, tolerance, responsibility, creativity, fairness, discretion, empathy⁷.

According to the teachers, after the programme, the climate in the schools where the programme was implemented did not improve radically, although the direction of the achieved changes is satisfactory. Probably due to the better situation before the programme (less school violence), more positive changes occurred in the rural school. Schoolchildren were much more likely to declare that they would give help to younger classmates who were bullied by older pupils. They declared reaching for constructive ways of solving peer conflicts, e.g. assertively. Middle school students from an urban school claimed to be more concerned with meeting other people's needs and seeking a solution to the conflict that satisfies all participants⁸.

The level of awareness and knowledge of the pupils surveyed about violence has changed. Pupils from the rural school significantly less often experienced school violence from others, while their peers from the city were significantly less likely to use it against members of the school community. They declared avoidance of emotional aggression in their relationship with peers. These changes were confirmed by teachers, who indicated a decrease in vandalism at school and an increased sense

⁶ Cfr. A. LEWICKA-ZELENT, *Analiza zasobów osobistych uczestników szkolnego warsztatu mediacyjnego* [Analysis of the personal resources of the participants in the school mediation workshop], Opole, Wyd. SCRIPTORIUM, 2014.

⁷ Cfr. Ivi.

⁸ Cfr. A. LEWICKA-ZELENT, *Diagnoza weryfikacyjna programu mediacyjnego. Klimat szkół gimnazjalnych* [Verification diagnosis of the mediation programme. Middle school climate], Opole, Wyd. SCRIPTORIUM, 2014.

of safety on the school premises. As a result, there was an increase in constructive cooperation between students and teachers.

Pupils admitted that after the mediation programme, teachers began to support them more strongly in solving problems, used effective teaching and learning methods more often and made clear teaching and learning requirements.

Regardless of the location of the school, urban or rural, the participants rated the “Mediation at School” programme highly. Pupils drew attention to the possibility of resolving conflicts without the involvement of adults. Teachers perceived a reduction in educational problems. Peer mediators appreciated the opportunity for their social and emotional development. Parents were satisfied because they had fewer parenting problems and their children were safer at school. The school climate improved due to a reduction in conflicts and, as a result, the school's prestige increased⁹.

Summarising from the example presented, very satisfactory results can be obtained from the implementation of the school mediation programme. Attention is drawn to the possibility of developing young people in the ethical sphere. Here, we are thinking, for example, of empathy and pro-social attitudes as a basis for helping behaviour¹⁰. In addition, it is rewarding to change the ways of resolving conflicts to more assertive ones. Importantly, these methods were implemented by the adolescents into a different environment than school. Indeed, they confirmed that they had changed their approach to conflicts with siblings and parents. The reduction of verbal, emotional aggression also serves to improve relationships at school, but also in peer groups. Such positive changes in the participants of the mediation programme give hope that they will be role models for their peers. Thus, the next stage of work with these students may be the project “Helpsters” implemented at the 9th High School in Lublin¹¹, in which young people with socially desirable characteristics support their younger peers.

⁹ Cfr. Ivi.

¹⁰ Cfr. M. DAVIS, *Empathy. A Social Psychological Approach*, London, Routledge, 1995.

¹¹ <https://biskupiak.lublin.pl/uczen/helpsterzy/> (access date: 14.08.2023).

The Children's Ombudsman in November 2017 made public the “Standards for peer and school mediation in schools and other educational institutions”, which was the result of a collaboration between research and mediation practitioners. Although not a normative act, they provide some guidelines, recommendations for those who intend to use mediation in schools¹².

The team, led by the Children's Ombudsman, recommends in terms of introducing mediation into schools:

- organising information meetings on mediation for school staff, pupils and their parents, with the participation of: court mediators, representatives of non-governmental organisations, mediation coordinators or school legal education coordinators appointed in common courts and staff of psychological and pedagogical counselling centres;

- obtaining the consent of: Headmaster, Pedagogical Council, Parents' Council and Student Council;

- introducing a provision in the school statutes on peer mediation;

- appointing a peer mediator supervisor(s) from among the teaching staff;

- conducting an information and promotion campaign on mediation;

- recruiting a peer mediator (trustworthy student, psychosocially mature, over 10 years of age) by the college community;

- conducting a min. 20-hour training for peer mediator candidates with the consent of the student and his/her parents and min. 40-hour training for school mediator candidates;

- establishing a mediation centre, club or circle in the school, whose participants (school and peer mediators) will develop the required mediation documentation templates and applicable rules;

- maintaining continuity in the education of successive groups of peer mediators.

¹²http://brpd.gov.pl/sites/default/files/standardy_mediacji_rowiesniczej_i_szkolnej_w_szkolach_0.pdf (access date: 14.08.2023).

The conduct of the mediation itself should follow certain rules. The mediation meeting gives a sense of security to the participants and therefore takes place in a special room in the school. It is organised outside of lessons, on the request of: pupils, tutors or teachers, an educator, a mediator, a psychologist, a parent or the principal for a peer mediator, a school mediator, a peer mediator supervisor or another school employee. The function of organiser, coordinator is performed by the peer mediators' supervisor and the person qualifying the cases for mediation and archiving the documentation. Peer mediation is conducted by two peer mediators. After its completion, they participate in a supervision meeting with the supervisor, which serves to develop their competences, strengthen their cooperation and resolve difficult situations¹³.

4. Academic Mediation

When we talk about youth mediation we very often bring our thinking down to schools, most often the final grades of primary and secondary schools, forgetting about academic youth. «In a metric sense, student youth are those between the ages of 19 and 27»¹⁴. This is a specific group of people who is in the period of early adulthood when social and professional roles are crystallised.

Paweł Czarnecki defines academic mediation as,

«a voluntary and confidential proceeding aimed at the elimination or alleviation of a dispute arising at a higher education institution between the aggrieved party and the perpetrator of a disciplinary tort with the participation of an impartial academic who,

¹³http://brpd.gov.pl/sites/default/files/standardy_mediacji_rowiesniczej_i_szkolnej_w_szkolach_0.pdf (access date: 14.08.2023).

¹⁴ R. GÓRALSKA, *Studenci uniwersytetu końca XX wieku: raport z badań młodzieży Uniwersytetu Mikołaja Kopernika* [University students at the end of the twentieth century: a research report on young people at Nicolaus Copernicus University], UMK, Toruń 2003, p. 54.

using knowledge and conflict mitigation skills, seeks to reconcile the parties to this proceeding and for them to reach a reasonable settlement»¹⁵.

It, thus, indicates the characteristics of the proceedings, the qualities of the mediator and the purpose of mediation proceedings. In this sense, mediation serves to alleviate the conflict arising after a disciplinary offence has been committed but also defends ethical values in the university environment. In the opinion of the authors of the article, this is not an exhaustive definition as it does not take into account the nature of all cases in which academic mediation is applicable. These are not just disciplinary cases where it can be applied. Other proven areas are cases of inequality at universities and collegiate conflicts among students and in the relationship between students and academics. This means that university students can play different roles in the proceedings: the person aggrieved (disciplinary case against teachers), the person who initiated the conflict e.g. cultural, the student who is a participant in the disciplinary proceedings, the person or peer mediator in student conflicts. The spectrum of possibilities is large, nevertheless P. Czarnecki¹⁶, after analysing collected data from 17 Polish universities, concluded that mediation has not been adopted in disciplinary proceedings conducted against academic teachers.

Olga Sitarz and Dominika Bek¹⁷ argue that academic mediation prepares young people for social life, as they will learn to come to an agreement with other people in an alternative way thanks to their ability to resolve conflicts constructively.

From the legal side, Polish universities have the possibility to conduct academic mediation, but undoubtedly this is the beginning of the road. Apart from the lack of detailed internal regulations and financial resources for this purpose, the biggest challenge is to change the awareness of members of the academic community, shaped

¹⁵ P. CZARNECKI, *Mediacja akademicka – konfrontacja teorii z uczelnianą praktyką* [Academic mediation - confronting theory with university practice], in «Forum Polityki Kryminalnej», 2(4), pp. 1-22, 2022, p. 7.

¹⁶ Ivi, p. 19.

¹⁷ Cfr. D. BEK, O. SITARZ, *Mediacja w postępowaniu dyscyplinarnym prowadzonym wobec członków społeczności akademickiej* [Mediation in disciplinary proceedings against members of the academic community], in «Forum Prawnicze», 5(49), pp. 34-49, 2018.

on the attitudes of the older generation (parents), who choose a seemingly simpler solution - court. Therefore, from the point of view of the social responsibility of the academic community, it is necessary to broaden the knowledge of students and academics about mediation and to develop their skills of cooperation in the search for a solution to conflicts.

The Academic Mediation Centre (ACM), established in 2020 at the Faculty of Law and Administration of Maria Curie-Skłodowska University in Lublin, can be considered a so-called good practice. Its aim is to popularise it and develop. Its members carry out a variety of activities for academic mediation: research, teaching, training and service (maintaining a university list of mediators and providing mediation services among the academic community)¹⁸.

5. Values of youth mediation

An important value of youth mediation is that it is conducted in accordance with the principles of the Code of Ethics for Polish Mediators¹⁹ and the Code of Ethics of the Peer Mediator (KEMR).

The Social Council for Alternative Methods of Resolving Conflicts and Disputes at the Minister of Justice, promulgating the Code of Ethics for Polish Mediators in May 2008, introduced a document that applies to all mediations, regardless of type. These are therefore principles overriding others, such as those enshrined in the KEMR, which aims to “promote ethical attitudes of the mediator, based on respect for the other person, taking into account the subjectivity of the parties to the conflict, building trust in the mediator and mediation as a method of resolving peer conflicts”. It is about maintaining high standards in the conduct of peer mediation. To this end,

¹⁸ <https://www.umcs.pl/pl/nasze-cele,23125.htm> (access date: 14.08.2023).

¹⁹ https://pracodawcy.pl/wp-content/uploads/2021/05/kodeks_etyczny_mediatorow.pdf (access date: 15.08.2023).

the peer mediator has the necessary mediation competences, which he/she scales up. He or she makes all information public by his or her colleagues – participants in mediation – as long as he or she does not violate the principle of personal data protection. He or she ensures that he/she and his/her colleagues comply with the mediation rules. Decides to accept a mediation case only if he or she can ensure a high professionalism of his or her services. Respects the decisions of the mediation participants according to the principle of their well-being, and therefore accepts a subordinate role – that of a helper in the search for conflict resolution²⁰.

The mediator, because of his function, is obliged to continuously improve his competence. This serves his intellectual, social, emotional and moral development. He or she acquires knowledge about people and the relationships between them and how to repair them. He becomes familiar with the ethical principles he is obliged to follow. Participates in conversations, negotiations, creates safe climate, recognises people's needs. Constantly exercises his/her assertive and empathetic skills²¹.

Peer mediators learn to perform their function properly. They have to distinguish it from other functions, for example, a "detective" who asks a lot of unnecessary questions, interrogates, looks for evidence. It is not uncommon for them to unnecessarily step into the role of a police officer - a directive person, interrogating, looking for evidence, or a judge judging, criticising, finding fault, punishing. He also learns to avoid the role of the rescuer, taking responsibility for solutions and taking away the independence of the mediation participants²²

By definition, mediation is good and serves people, especially its participants. It enables them to take an active role in finding satisfactory solutions to the conflict, and in doing so increases their sense of self-efficacy and responsibility. It allows them to deal with the issue in a way that is consistent with their needs, in a quick and

²⁰http://brpd.gov.pl/sites/default/files/standardy_mediacji_rowiesniczej_i_szkolnej_w_szkolach_0.pdf (access date: 15.08.2023).

²¹http://brpd.gov.pl/sites/default/files/standardy_mediacji_rowiesniczej_i_szkolnej_w_szkolach_0.pdf (access date: 15.08.2023).

²²<https://archiwum-bip.men.gov.pl/wp-content/uploads/sites/2/2020/04/niezbednik-mediatora.pdf> (access date: 14.08.2023).

inexpensive (or even cost-free) manner, to work off strong emotions, to reduce anxiety, to regain trust and social respect.

Indirectly, they can stop conflict and even improve relationships. This is extremely important when the participants in the conflict are close to each other, e.g. they study together in the same class, are relatives or neighbours, which implies the need to cooperate in the future²³.

6. Conclusions

Summarising the discussion on the ethical aspects of mediation with young people, an attempt has been made to indicate the relationship between upbringing, prevention and mediation. This is because it is necessary to draw attention to their close interrelation and thus their application in the interactions undertaken with young people.

Upbringing can be defined very differently, but it can be considered to be the process of supporting the development of the child's moral, intellectual, physical and artistic qualities, the so-called resources²⁴. It is purposeful, planned, deliberate and aims to achieve specific outcomes. Mediation, on the other hand, is a conversation between people in conflict aimed at satisfying the needs of the participants in the mediation, taking place in the presence of a mediator creating appropriate conditions for the mediation to take place²⁵.

²³http://brpd.gov.pl/sites/default/files/standardy_mediacji_rowiesniczej_i_szkolnej_w_szkolach_0.pdf (access date: 15.08.2023).

²⁴ Cfr. N. SILLAMY, *Słownik psychologii* [Dictionary of psychology], Ustawa z dnia 26 października 1982 r. o postępowaniu w sprawach nieletnich z późn. zm. (Dz. U. 1982 Nr 35 poz. 228), Warszawa, Wydawnictwo Książnica, 1994.

²⁵ Cfr. A. LEWICKA-ZELENT, *Obniżanie poziomu przemocy i lęku młodzieży gimnazjalnej* [Reducing levels of violence and anxiety among junior high school students], Lublin, UMCS, 2012.

The features common for upbringing and mediation are:

- the presence of educational contact, although in a specific form (Education can be understood as a process of interaction between an educator and a role model. In mediation, the participants learn from each other, but also from a peer mediator who has been chosen from among the most trusted pupils of their peers and who is therefore a role model);

- similar essence of support (In upbringing it is the educator who supports, accompanies, whereas in mediation it is the mediator who helps to bring the conversation to a successful conclusion, i.e. to reach an agreement);

- the same far-reaching goal (Both upbringing and mediation foster the development of the human being, which is ultimately to be mature)²⁶.

Zbigniew Gaś²⁷ points to the risks to the development of the psychological, social and spiritual spheres in young people. He boils down the risk factors in upbringing to: blurring of the boundaries between rights and duties, strengthening of egocentrism, preference for hedonistic values, failure to fulfil social roles. Appropriate educational interventions by educators and parents can block these. One effective way can be mediation. Through it, peer mediators learn to adequately perform the role of mediator with a sense of full responsibility. They develop their social competences, including helping others, understanding and empathy. Following Z. Gaś²⁸ that prevention is a comprehensive intervention, consisting in supporting the pupil in coping with factors blocking his or her development, eliminating them and strengthening protective factors, mediation can be regarded as an excellent preventive influence.

²⁶ Z. GAŚ, *Psychoprofilaktyka. Procedury konstruowania programów wczesnej interwencji* [Psychoprophylaxis. Procedures for the design of early intervention programmes], Wydawnictwo Lublin, UMCS, 2000.

²⁷ Cfr. Ivi.

²⁸ Cfr. Z. GAŚ, *Tworzenie środowiska szkolnego sprzyjającego działaniom profilaktycznym* [Creating a school environment conducive to preventive action]. in A. MARGASIŃSKI, B. ZAJĘCKA (eds.), *Psychopatologia i psychoprofilaktyka. Przejawy narkomanii, alkoholizmu, przemocy, zaburzeń psychicznych w rodzinie i szkole oraz możliwości im przeciwdziałania* [Psychopathology and psychoprophylaxis. Manifestations of drug addiction, alcoholism, violence, mental disorders in the family and school and possibilities of counteracting them], Kraków, Oficyna Wydawnicza Impuls, 2000, pp. 441-444.