

A Few Words About Academic Mediation

Mediation is a method of alternative dispute resolution. It is used not only at the pre-trial stage but also during ongoing proceedings – civil, criminal, or administrative. Mediation is based on basic principles such as: voluntary participation in mediation, confidentiality, and the impartiality of the mediator (P. Sołtysiak, *Mediation as an Alternative Method of Dispute Resolution*, “Scientific Journals of the Institute of Administration AJD in Częstochowa” 2012, vol. 2(6), pp. 11–17).

The advantage of mediation is the possibility of mutual listening, understanding the perspective and arguments of the other party, and the space for jointly and constructively reaching an agreement under the watchful eye of a mediator. This creates an opportunity to de-escalate conflict, understand its origins, and prevent future occurrences – especially when the parties involved will continue to cooperate with each other.

Mediation is increasingly becoming a tool used in academic settings to resolve disputes between members of different groups within the academic community. Therefore, due to the specific nature of the activities of higher education and research entities (universities, institutes of the Polish Academy of Sciences, research institutes, etc.), it is possible to speak of a special type of mediation – “academic mediation”.

Considering the diversity of relationships and interactions in the academic world, one can distinguish between academic mediation in the *strict sense (sensu stricto)* and the *broad sense (sensu largo)*.

Academic mediation *sensu stricto* has a normative basis in the provisions of the Act of July 20, 2018 – Law on Higher Education and Science (consolidated text, Journal of Laws 2024, item 1571, as amended – hereinafter: PSWiN), where it forms part of disciplinary proceedings concerning academic teachers. According to Art. 282(1) PSWiN, referring a case to mediation is one of the options available to the rector upon receiving a notification of a potentially disciplinary act or upon acquiring information about a possible offense. Mediation is conducted with the consent of the person to whom the notification or information pertains, as well as the injured party. The mediation is carried out by an academic teacher appointed by the rector, who prepares a report on its outcomes and submits it to the rector (Art. 283(1–3) PSWiN). Mediations may conclude with a settlement or the absence of an agreement, which leads to the initiation of explanatory proceedings.

Taking into account these statutory regulations, it is reasonable to use the definition of academic mediation (*sensu stricto*), according to which it is “a voluntary and confidential procedure aimed at resolving or mitigating a dispute arising at a higher education institution between the injured party and the perpetrator of a disciplinary offense, involving an impartial academic teacher who, using knowledge and conflict resolution skills, seeks to reconcile the parties and reach a rational settlement” (P. Czarnecki, Academic Mediation – Confronting Theory with University Practice, Forum of Criminal Policy 2022, vol. 2(4), p. 7).

Detailed regulations regarding the conduct of mediation are set out in the Regulation of the Minister of Education and Science of June 8, 2022, on the detailed procedure for conducting mediation, explanatory proceedings, and disciplinary proceedings in cases of disciplinary responsibility of academic teachers, as well as the manner of executing and erasing disciplinary penalties (Journal of Laws, item 1236). The provisions of the regulation extended the possibility of using mediation at different stages of proceedings. The case may be referred to mediation also by the disciplinary officer during the explanatory proceedings – on their own initiative or with the consent of the person to whom the proceedings relate – and by the disciplinary committee during disciplinary proceedings – on their own initiative or with the consent of the accused and the injured party (§48(1)(2–3)). The regulation also specifies the duties of the mediator, the place of mediation, and the procedure after referring a case to mediation.

It is worth noting that, in light of the regulation, concluding mediation with a settlement does not necessarily mean closing the case. In such a situation, the provisions provide only the possibility (not the obligation) to discontinue explanatory proceedings. Moreover, there is a negative condition for discontinuation, which applies when the circumstances of the case require disciplinary punishment (§48(7)). Such a situation may occur when the act violates not only the interests of the injured party but also the general good (*Ibidem*, p. 13). Nevertheless, positive results of mediation are taken into account when imposing disciplinary penalties.

Conducting disciplinary proceedings is a form of internal accountability, which, in the often closed academic environment of a given university, carries the risk of lack of independence and impartiality of these procedures (even despite formally existing mechanisms). Therefore, the limitation of conducting mediation exclusively by an academic teacher can be questioned. Both the Act and the regulation do not provide any additional requirements for fulfilling this function (particularly qualifications). This often results in mediation being conducted by non-specialist entities, which can lower the quality of the proceedings.

It is also worth noting that academic mediation has been provided only for disciplinary proceedings concerning academic teachers; there is no such solution for proceedings involving students or PhD candidates.

However, mediation in higher education is not limited solely to mediations conducted within disciplinary proceedings. Academic mediation *sensu largo* refers to mediations used outside the rigid normative framework of disciplinary proceedings. Increasingly, mediation is being incorporated into anti-discrimination and anti-bullying procedures conducted within universities and research institutes. Mediation – even when conducted in a less formal manner – is also used to resolve disputes in the supervisor-PhD candidate relationship in doctoral schools. Importantly, academic mediation *sensu largo* is conducted based on internal regulations and practice, not on the provisions of PSWiN or the regulation.

The popularization of the mediation institution deserves approval, as it promotes the development of relationships based on respect and dialogue. However, the scope and framework of mediation in the academic world should increasingly aim to maintain its impartiality and independence.

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