BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JOAN ZERZAN, Appellant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE NO. R-RULE-12-002 ORDER OF THE BOARD FOLLOWING HEARING ON EXCEPTIONS TO THE DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came before the Personnel Resources Board, DJ MARK, Chair; JOSEPH PINZONE, Vice Chair; and NANCY HOLLAND YOUNG, Member; for a hearing on Appellant's exceptions to the director's determination dated August 16, 2012. The hearing was held in the Personnel Resources Board hearing room in Olympia, Washington, on December 12, 2012.

Appearances. Appellant Joan Zerzan represented herself. Lawrence Paulsen, Assistant Attorney General, represented Respondent University of Washington (UW).

Background. On January 18, 2012, the Office of the State Human Resources Director received Appellant's request for a director's review. Appellant alleged that the University of Washington violated the civil service laws and rules regarding performance evaluations and WAC 357-22-035. The director's designee conduct a review of written documentation and by letter dated August 16, 2012, concluded that no violation occurred.

On September 11, 2012, Appellant filed exceptions to director's determination. The primary thrust of Appellant's exceptions relate to complaints about Appellant's performance that became the basis of an Informal Action Plan and were incorporated into her performance evaluation. Appellant's exceptions are the subject of this proceeding.

Summary of Appellant's Arguments. Appellant asserts that UW inappropriately used and weighted information to determine the performance rating included in her evaluation without substantiating the complaints or allowing her an opportunity to respond. Appellant argues that using this information was a procedural error. Appellant asserts that UW failed to adhere to key elements of UW Administrative Policy Statement (APS) 43.14 and failed to apply the elements of the policy consistently to all employees. Appellant asserts that UW improperly weighted information used in the evaluation process in a way that adversely impacted her evaluation. Appellant contends that she was not made aware that the Informal Action Plan was considered supplemental information that would be used in the evaluation process. Appellant asserts that the supplemental information was not an outcome of the process and should not have been included in the evaluation. Appellant asserts that the supplemental information should not be immune from scrutiny because it was not content but was part of the process. Appellant contends that she should have been given an opportunity to seek redress of the supplemental information before it was included in her evaluation or referenced during in the evaluation process.

Summary of Respondent's Arguments. Respondent argues that UW has a performance management process, that Appellant received an annual evaluation, that prior to the evaluation, she was made aware of complaints about her performance, and that the evaluation appropriately documented the concerns about Appellant's performance so that she would know that improvement was necessary. Respondent argues that University's published policy, APS 43.14, complies with the requirements of WAC 357-37-015 and that Appellant's evaluation was conducted consistent with the policy and the rules. Respondent further argues that Appellant's review request and exceptions appeal are an attempt to challenge the content of the evaluation which is not subject to review. Respondent asserts that it is appropriate to incorporate Informal Action Plans (IAP) into the performance evaluation documentation and that including the IAP in the process did not violate the performance management rules or WAC 357-22-035. Respondent asserts that Appellant provided no evidence to show that UW violated the civil service rules regarding performance evaluations or WAC 357-22-035.

Primary Issue. Whether the director's determination that UW did not violate the civil service rules regarding the performance evaluation process and WAC 357-22-035 should be affirmed.

Decision of the Board. WAC 357-37-080 provides, in part, that ". . . an employee may request a director's review of alleged irregularities in the use of the approved performance evaluation form and/or procedures outlined in the civil service rules. The content of an evaluation is not subject to review."

In summary, Chapter 357-37 WAC contains the requirement that employers have a performance management process. The process should provide for annual employee evaluations and should document the areas in which the employee needs to demonstrate improvement. University of Washington Administrative Policy Statement (APS) 43.14 establishes that the University had a performance management process.

The thrust of Appellant's exceptions revolve around a November 10, 2011 meeting with human resources staff to address co-worker complaints about Appellant's performance and the subsequent memorializing of complaints in an Informal Action Plan (IAP) dated December 12, 2011. On December 19, 2011 Appellant met with her supervisor as part of the performance evaluation process. At that meeting, Appellant became aware that information from the employee complaints may be included in the evaluation. She received a copy of the IAP after her performance review meeting with her supervisor, but she was aware of the complaints prior to the review meeting. The IAP was referenced and included as part of the performance review documentation. Incorporating the IAP into the evaluation process and the written evaluation is consistent with the intent of performance management and does not constitute an irregularity in the use of the evaluation form or procedures outlined in the civil service rules.

An IAP is not a formal disciplinary matter and cannot be appealed to the Board. Appellant's recourse to address concerns with the IAP would have been through internal UW processes. Appellant did not avail herself of the opportunity to challenge the IAP. In addition, she could provide a response or rebuttal to the IAP and to the performance evaluation to be placed in her personnel file as provided in WAC 357-22-045 which states: "[a]fter an employee becomes aware that adverse information has been placed in his/her personnel file, he/she has the right to add a statement of rebuttal or correction of such information. At anytime, an employee has the right to add job performance information to his/her personnel file."

Appellant has failed to show that UW violated the requirements of the civil service laws or rules related to the performance evaluation process or WAC 357-22-035.

In an appeal on exceptions, the party filing the appeal has the burden of proof. WAC 357-52-110. Appellant has failed to meet her burden of proof.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Joan Zerzan is denied and the director's determination dated August 16, 2012, is affirmed.

DATED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOE PINZONE, Vice Chair

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NANCY HOLLAND YOUNG, Member