

FRISK® Documentation Model

Practical Guidelines for Effectively Addressing Employee Misconduct and Performance Concerns

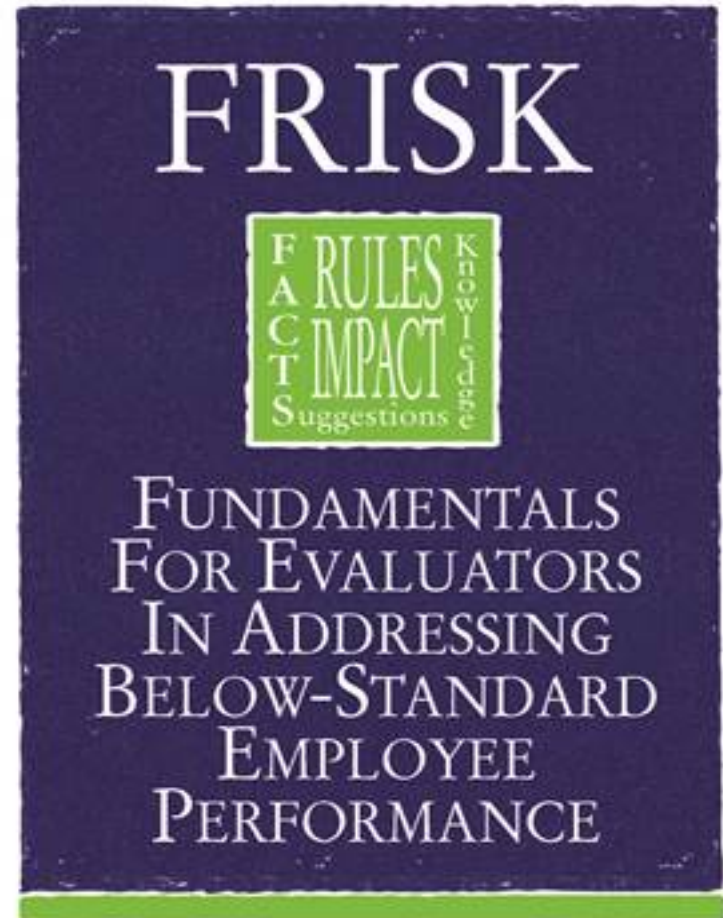
ACCCA Great Deans
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PRESENTED BY:

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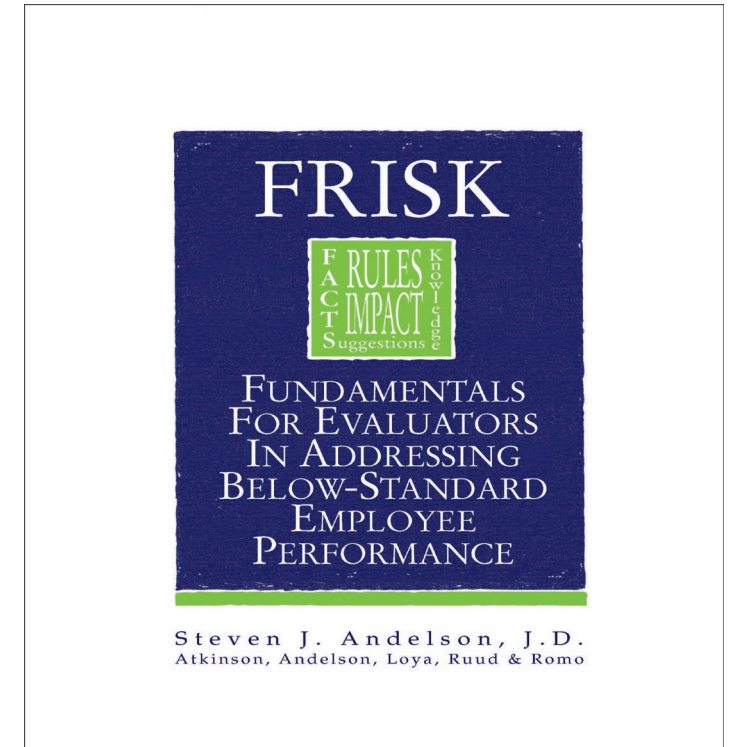
Jacques Whitfield, CPS HR Consulting



Steven J. Andelson, J.D.
Atkinson, Andelson, Loya, Ruud & Romo

Coming Up

- What FRISK® Is and Its Framework
- Progressive Intervention
- Uncovering Each F – R – I – S – K Element
- Some Thoughts on Framing the FRISK® Message and Strategic Planning



FRISK® and Its Framework

FRISK® is an acronym representing universal components which should be included in legally sufficient documentation intended to improve employee performance through direct, honest and constructive communication.

It is a model for addressing below-standard performance that includes the following fundamentals:

- Progressive intervention
- Key feedback components
- Framing The **FRISK®** Message and Strategic Planning

Why FRISK®? Common Problems

- ✓ Little or no documentation of poor performance or misconduct in the personnel file.
- ✓ Lack of evidence of previous discipline
- ✓ Failure to accurately describe performance problems on evaluations
- ✓ Failure to describe specific expectations
- ✓ Failure to specify remediation plan and track follow through
- ✓ Lack of actual notice to employee of the precise problem and that future similar behavior/performance could lead to disciplinary action
- ✓ Lack of uniformity in handling employee performance and/or misconduct issues

What is FRISK® Good For?

Objectives



- Improved performance
- Constructive feedback, not sugar coated
- Document progressive intervention
- Support “winnable” cases – burden of proof
- Defend:
 - Discrimination complaints
 - Grievances
 - Unfair practice charges
- Simplify documentation process

What Does FRISK[®] Mean?

Dear Mary:

F _____
R _____
I _____
S _____
K _____

Sincerely,
Alice Mann-Edger

- Components:
 - **F R I S K**
- Structure of letter:
 - 5 paragraphs
- Self-contained

FRISK[®] and Its Framework



Progressive Intervention

WHERE TO START?

Progressive Intervention

Objectives



- Support employee improvement:
 - Identify issue early to give a reasonable opportunity to effect change
 - Coach, motivate and foster improvement through specific suggestions and directives
- Show seriousness of concern and a good faith effort by management
- Recorded efforts justify additional levels of intervention and culmination in discipline when necessary

Progressive Intervention cont'd...

Coaching

Oral Warnings / Conference Summaries

Written Warning

Reprimand

Educ. Code § 87734: 90-Day Notices

Suspension Without Pay

Dismissal

Progressive Intervention

Factors For Deciding Step In Progressive Discipline And Whether To Repeat or Skip Steps:

Seriousness of Misconduct

Past Similar Conduct

Impact of Misconduct

Past Employment Record

Likelihood of Repetition

Past Practice

Progressive Intervention cont'd...

In Practice

- Typical contract (and personnel commission rules) provide . . .
 - District shall follow progressive discipline...except in cases where...
- Even if not mandatory, it is a good idea to follow the accepted methods



BE CONSISTENT!

Progressive Intervention cont'd...

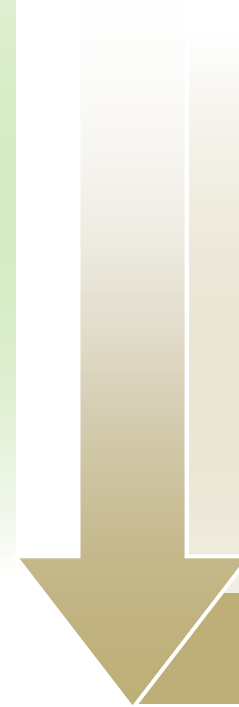
Relevance to Formal Evaluations

- Spend time drafting specific comments for the “Areas of Strength,” “Areas of Improvement” and “Other Comments.”
- Do not feel constrained by the space on the paper. Attach additional sheets if necessary.
- Draft your comments using the first three letters of **FRISK**[®] (i.e., Facts, Rule, Impact) . . . Stay tuned

Evaluations and the FRISK® Model

Evaluation

- Honestly describe performance
 - Reaffirm expectations
- Give specific feedback about deficiencies
- Set goals for improvement
 - Offer support



- FACTS
- RULE
- IMPACT
- SUGGESTIONS/ DIRECTIVES
- KNOWLEDGE

FRISK®

Evaluations

Too often the evaluation is inconsistent with other documentation of performance problems.

SUMMATIVE EVALUATION 2015

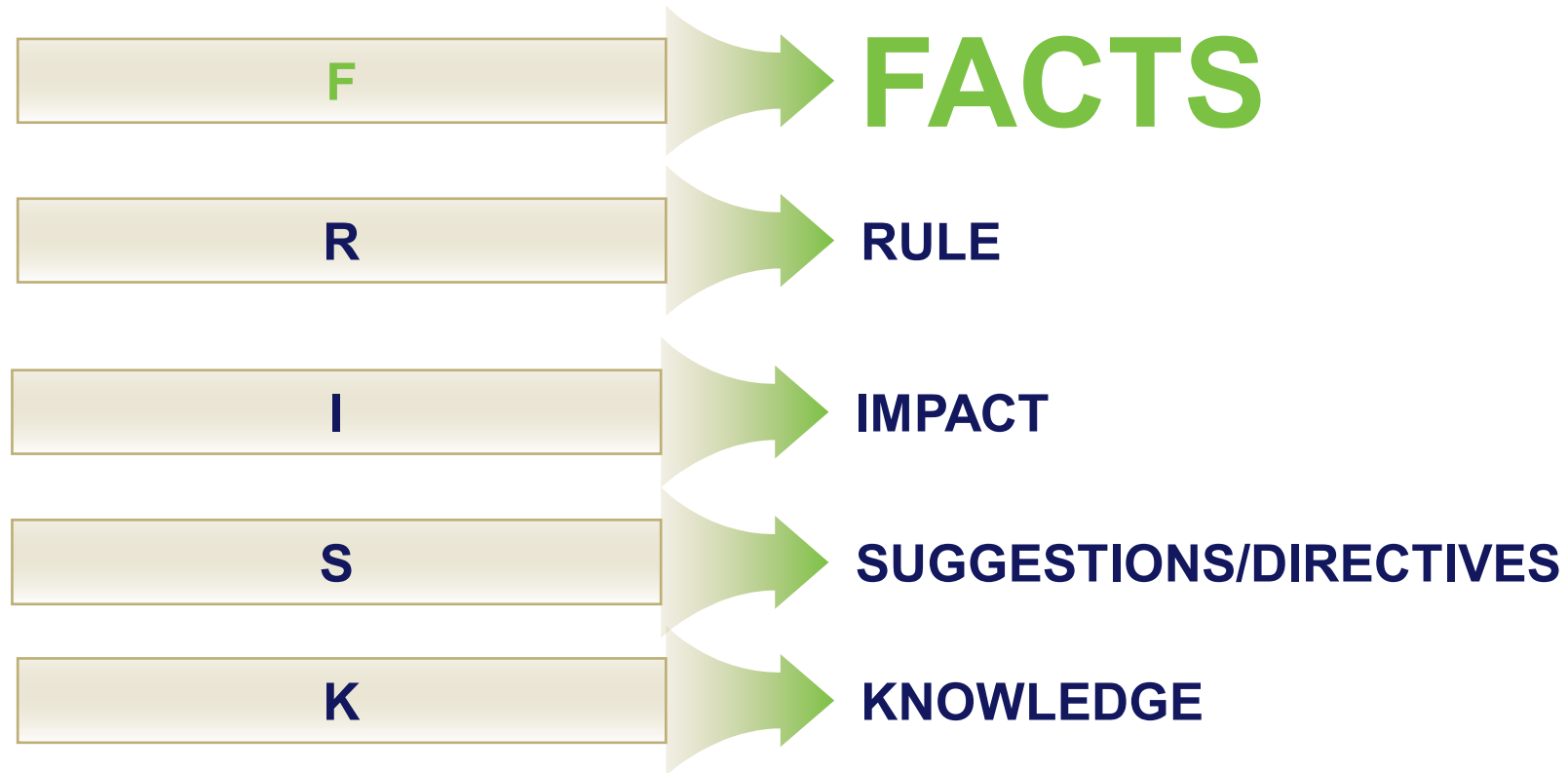
- ✓ Meets standards
- ✓ Exceeds standards
- ✓ Meets standards
- ✓ Meets standards
- ✓ Meets standards



LETTER OF REPRIMAND

- Rude to supervisor
- Failed to perform duties
- Dishonest during investigation

What Does FRISK® Stand For?



Facts

What Happened?

A narrative description that **CLEARLY DESCRIBES** the specific conduct of concern.



- Pinpoint deficiencies with specifics; complete and explicit terms that pass the “stranger test” (who, what, when, where, etc.)
 - Context
 - Avoids generalizations
- Facts are correct (validated) and stated objectively
- Avoid conclusions without supporting facts and concrete details

Facts cont'd ...

Bad Language Example:

“You are frequently late to staff meetings.”

Facts cont'd ...

Good Language Example:

“You are frequently late to staff meetings. Between November 15, 20xx and March 3, 20xx, you were late to faculty meetings on September 18 (10 minutes); September 29 (5 minutes); October 10 (15 minutes); and October 24 (10 minutes).”

Facts cont'd ...

Bad Language Example:

“You went to the gym at 7:30 a.m. on January 15, 20xx, and waited 10 minutes before returning to the department office.”

Facts cont'd ...

Good Language Example:

“On January 15, 20xx, I directed you to go to the gym at 7:30 a.m. to unlock the door for the building contractor. Instead of waiting until the contractor arrived, you left after 10 minutes and returned to the department office without opening the gym door.”

Facts cont'd ...

Conclusions vs. Facts

General Conclusions

You violated provision of labor agreement

Your work station is unclean

Supporting Facts

Took a morning break in excess of ten minutes, per Article II, Section 8, of the contract on March 2, 9, 15 and 19, 20xx.

On May 3, June 4 and June 6, 20xx, the custodial supply room in Building G was found to have used rags on the work bench, open containers of solvent, and equipment on the floor.

Facts cont'd ...

Conclusions vs. Facts

General Conclusions

John Smith was intoxicated

John Smith failed to follow instructions

Supporting Facts

After returning from lunch at 12:45 p.m. on June 19, 20xx, John Smith's speech was slurred. He staggered when he walked and fell against the file cabinets two times, and had a strong smell of alcohol on his breath.

On December 12, 20xx, at 10:30 a.m. and again at 1:45 p.m., John Smith was directed by his supervisor to repair the lock on the door at Room G25. At 2:15 p.m., he still had not followed this directive.

Facts cont'd ...

Communication “Tools” to Add Clarity

- Reference other documents and physical evidence where applicable
 - An invoice for repairs to district property shows the extent of the damage
 - Copies of deficient written materials
 - Student data entry logs show when an employee accessed the system and type of action performed (OR NOT PERFORMED)
 - A picture tells a thousand words!



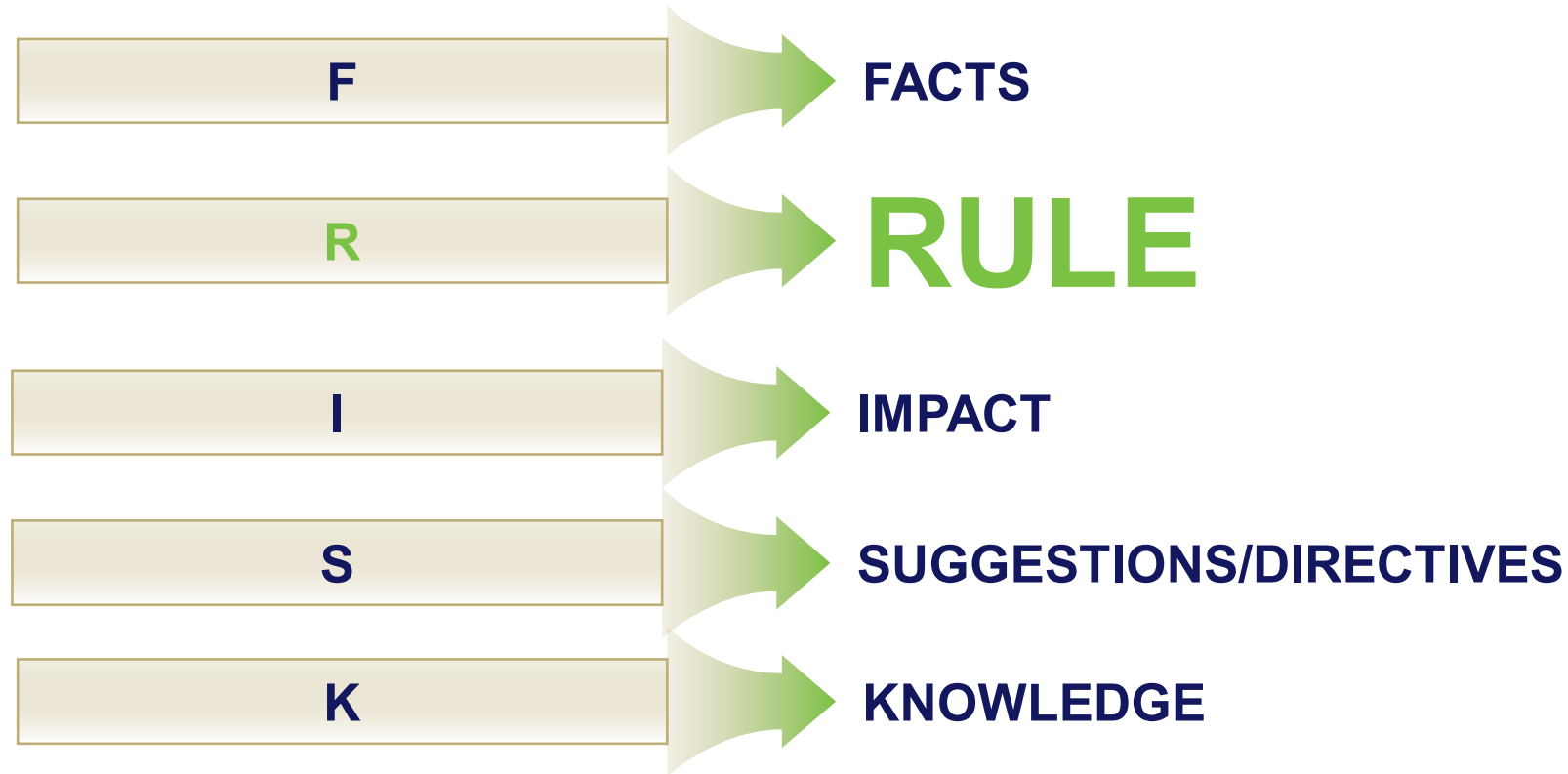
Facts cont'd ...

Communication “Tools” to Add Clarity

The Power of Photos



What Does FRISK® Stand For?



Rule

What Should the Employee Have Done?



- Finding The Rule
 - Federal/state/local laws
 - District policies/procedures/regulations
 - Collective bargaining agreements
 - Personnel Commission Rules
 - Job descriptions
 - Employee handbooks
 - Curriculum standards
 - Prior directives
 - In evaluations or training documents
 - Staff meeting directives (oral or written)

Rule cont'd...

**WHAT IF THERE IS NO
RULE ON POINT?**

1st

**DEFINE THE
PROBLEM**

2nd

**TRANSLATE IT
INTO THE
EXPECTED RULE**

Rule cont'd...

What Should the Employee Have Done?

- Creating A Valid Rule Where One Might Not Exist
 - Reasonably clear and instructive
 - Reasonably related to efficient/orderly operations
 - Uniformly applied
 - Not in conflict with other rules/directives
 - Communicated

Rule cont'd...

What Should the Employee Have Done?

- Referring To Prior Similar Rule Violations
 - Evidence of pattern and recurrence
 - Heightens awareness of seriousness
 - Highlights concern to motivate positive change
 - Justify increased corrective action
 - Reinforces prior notification to improve
 - Emphasizes growing concern
 - Look for overarching themes (e.g., performance or conduct issues seem to change from one time to the next)

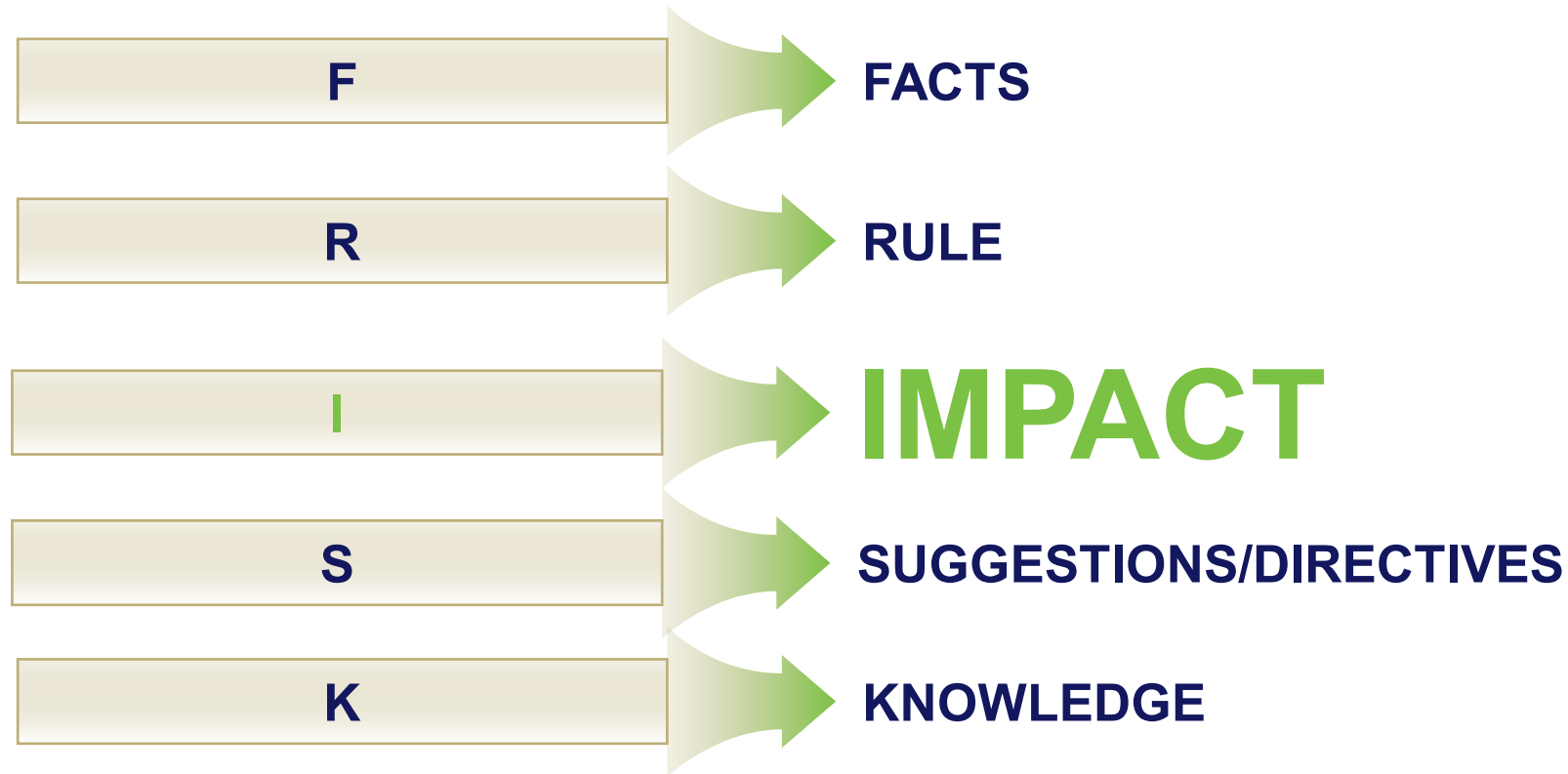


CASE STUDY

REVIEW AND OUTLINE THE FACTS AND RULES SECTIONS OF A COUNSELING MEMO

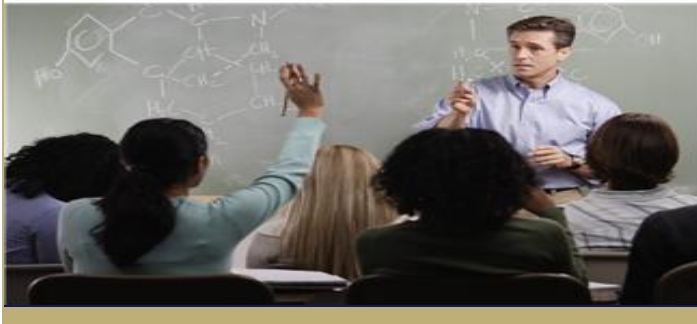
[Do you have all the information you need?
What level in progressive intervention do you recommend?]

What Does FRISK® Stand For?



Impact

What Harm (or Possible Harm) Was Done?



- To Whom? or What? and How?
 - Students | coworkers
 - Vendors | community
 - College or other's property
 - Efficient/orderly operations
 - Liability
 - Notoriety
 - Professional integrity | image
 - Standards of conduct

IMPACT

1. Lack of dependability in completing assigned tasks.
2. Shift of duties to other employees, causing increased workload and resulting faculty and staff morale problems.
3. Employment of substitute employees, resulting in additional cost to the district, college, or department.
4. Lack of continuity in completing the work schedule and routine responsibilities.
5. Disruption and delay in the completion of work and required timelines.
6. Reallocation of supervisory time in order to direct the work of substitute employees.

IMPACT

7. Destruction or damage to college property and replacement/repair costs.
8. Interference in normal procedures or the orderly conduct of the office, department, or college resulting in a loss of operational efficiency.
9. Exposure of employees and students to personal injury and district liability.
10. Interference with normal college departments procedures causing delay in the completion of work and the lack of compliance with required timelines.

IMPACT

- 11. Negative impact on faculty and staff morale.
- 12. Impairment of ability to effectively interact with other employees, thereby adversely impacting the efficiency of the department or college.
- 13. Impairment of ability to command the respect, trust, or confidence of students other staff or faculty, thereby negatively affecting working relationships and job effectiveness.
- 14. Impairment of ability to successfully perform the essential functions of a position because of loss of confidence or lack of credibility.

Impact cont'd ...

Why Describe the Harm That Was Done?

1

Shows the **connection** between the unsatisfactory conduct or performance to the job

2

Shows the **degree of seriousness** of the employee's conduct by including the overall **context** of the deficient performance.

3

Motivates the employee to change by sharing the evaluator's perception of the effect of the employee's behavior on the workplace

4

Advocates for those who are impacted to explain why the conduct must cease and/or why it must be changed

Impact cont'd ...

Describing What Harm Was Done

- The adverse impact needs to be clearly communicated
 - Clear and complete impact facts
 - Avoid conclusions without supporting facts and concrete details



Impact cont'd ...

EXAMPLE

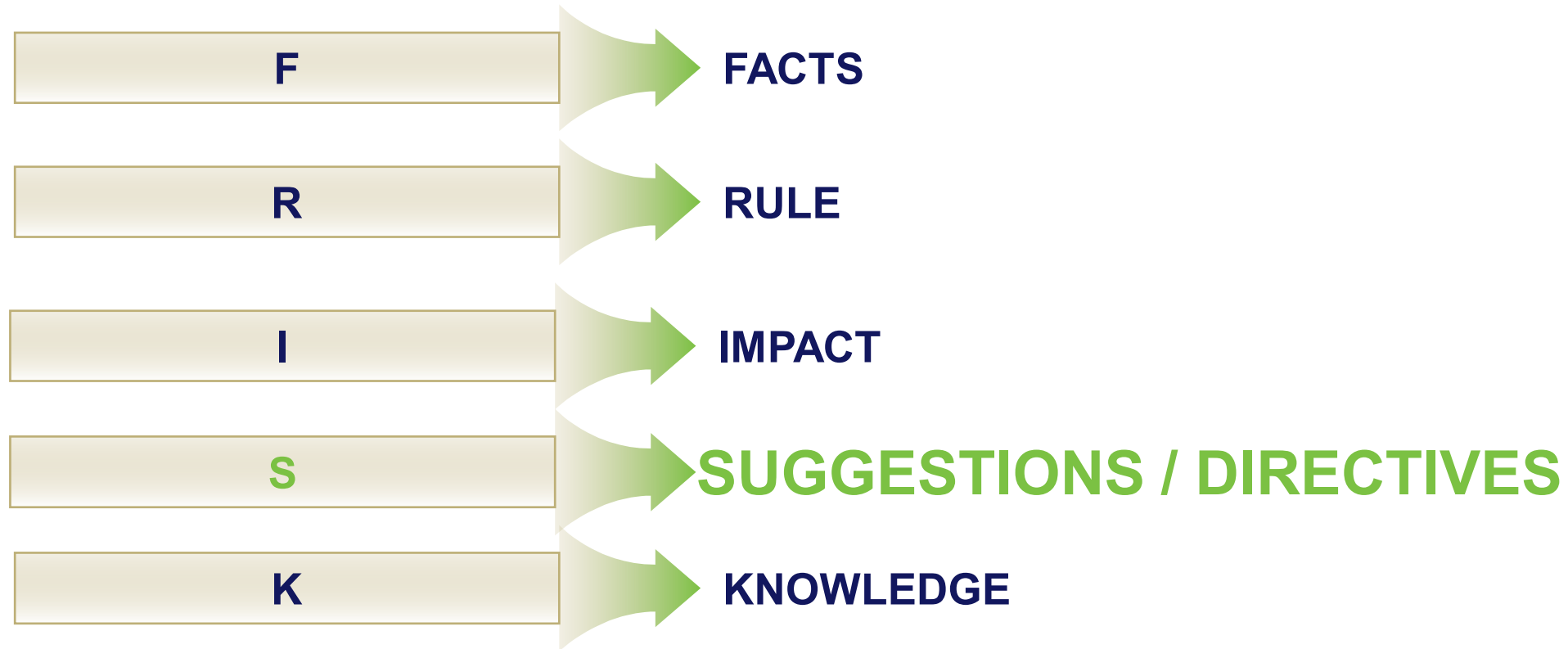


“Arriving late for duty without notifying the maintenance department prevented the campus from obtaining a substitute. This impacted the cleanliness of our campus, teaching facilities and the whole educational environment for students and staff. It also burdened your co-workers, who had to neglect their own duties to cover for yours.”

CASE STUDY

REVIEW
THE IMPACT SECTION
OF A COUNSELING MEMO

What Does FRISK® Stand For?



Suggestions/Directives

What Should the Employee Do Now?



- Directives
 - Effective timeline
 - Clear command verb/unambiguous; factually specific and unequivocal
 - Capture all anticipated related conduct
 - Consequences for noncompliance
- Suggestions
 - Specific techniques/resources
 - Personal assistance

Suggestions/Directions cont'd ...

The Difference

Suggestions and Directions are equally important for employee improvement,
but they are
VERY DIFFERENT in EFFECT:

☐ Suggestions (recommendations) = IDEAS for change
Employee NOT Accountable

☐ Directions = MANDATES for change
Employee IS Accountable

Suggestions/Directions cont'd ...

Which of the following phrases are clear or vague?

- 1 Would you mind responding by . . .
- 2 Please do the following by Friday . . .
- 3 I insist that you . . .
- 4 I would appreciate it if . . .
- 5 Perhaps you should . . .
- 6 You are directed . . .

Suggestions/Directions cont'd ...

Which of the following phrases are clear or vague?

7 I expect the following by . . .

8 You are required to . . .

9 You may wish to . . .

10 It is important that you . . .

11 It would be helpful if you would . . .

12 I see no reason why you should not be able to . . .

13 I insist you consider the following . . .

Suggestions/Directions cont'd ...

Consequences for Noncompliance

BAD FEEDBACK EXAMPLES:

- ☐ “Failure to follow my directive **may** result in further disciplinary action.”
- ☐ “Continued non-compliance with this directive **could** result in a recommendation of additional corrective action.”

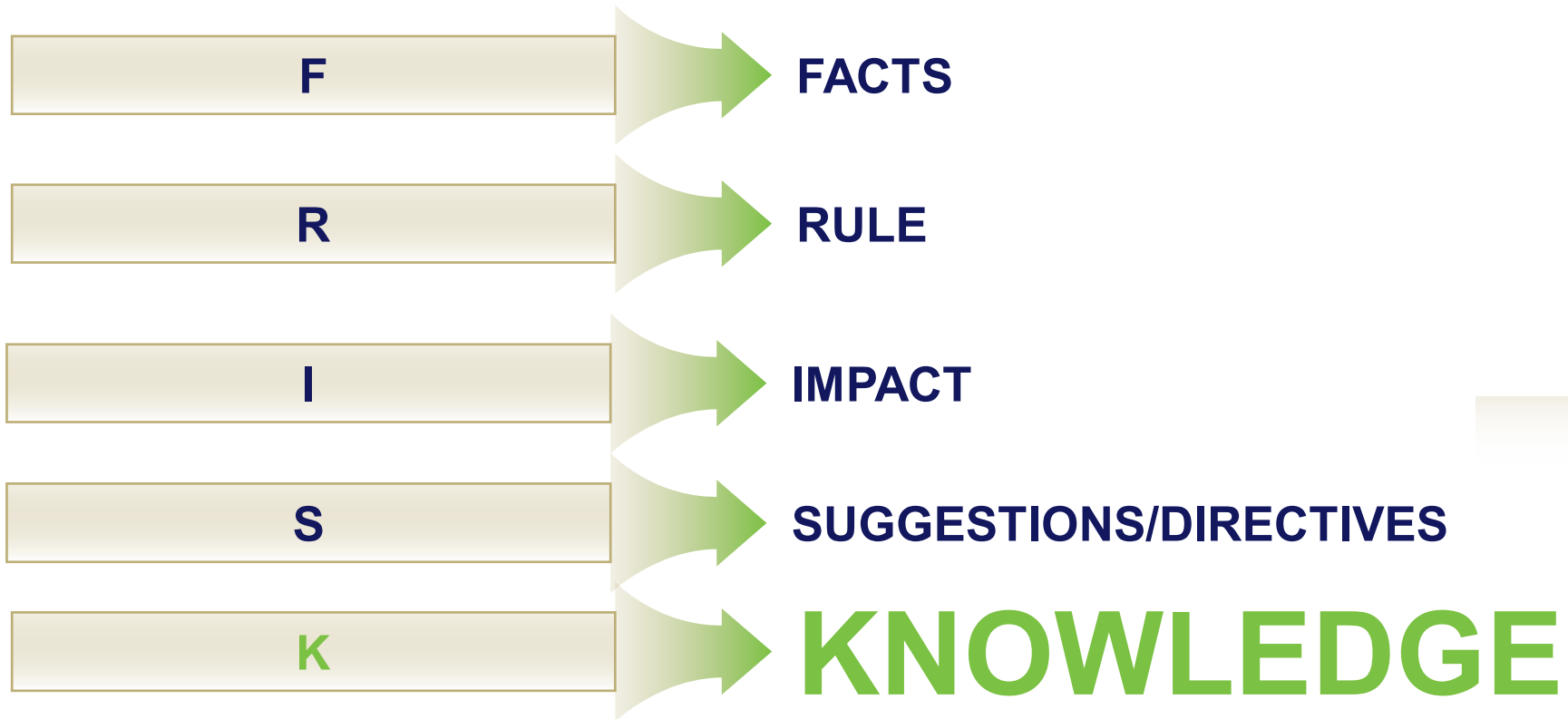
BETTER FEEDBACK EXAMPLES:

- ☐ “Failure to comply with this directive **will** result in further corrective action.”
- ☐ “Failure to comply with this requirement **will** result in a warning letter.”
- ☐ “Failure to follow my instructions **will** result in disciplinary action, including the issuance of a letter of reprimand.”

CASE STUDY

REVIEW THE SUGGESTIONS/DIRECTIVES SECTION OF A COUNSELING MEMO

What Does FRISK[®] Stand For?



Knowledge

What Rights Does the Employee Have?

Does the employee have knowledge of the document as required :



- Education Code section 87031
- Collective bargaining agreements
- District policies/regulations
- Personnel Commission rules
- *Miller v. Chico*
 - Effect on employment status
 - Reasonable time

“REASONABLE?”

Knowledge cont'd...

EXAMPLE

#1

“A copy of this letter will be placed in your personnel file after ____ days. You may prepare a response and have it attached to this document in your file.”

Knowledge cont'd...



EXAMPLE

#2

This conference memo will not be placed in your personnel file. However, if the conduct recurs, it will be placed in your personnel file as an attachment to any subsequent memo on this issue.

You may prepare a response and have it attached to this document.

CASE STUDY

REVIEW THE KNOWLEDGE SECTION OF A COUNSELING MEMO

Moving Documents to the Personnel File



- When Should a Document be Placed in the Personnel File?
- Site Files:
 - Anecdotal notes
 - Records of coaching/conferences
 - Complaints pending investigation
 - Beware: No good deed goes unpunished
- Moving records from site file to personnel files

Framing the FRISK[®] Message

The Art of Changing Behavior

Key Components to Changing Behavior

Employee cooperation for change:

1. Employee recognition of the performance problem
2. Employee acknowledgement of the need to correct the problem

Supervisor support:

1. Respectfulness
2. Trustworthiness
3. Timely feedback

FRISK® Strategic Planning

The Art of Changing Behavior

Difficult communications should be not be spontaneous. Planning is key:

- Commitment to addressing the issues
- Timing
- Setting
- Planning the presentation
- Delivering at the right level of intervention with the right tone

Thank You

For questions or comments about FRISK,
please contact:



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