

**ECU Board of Trustees
March 16, 2022
Special Called Meeting**

MINUTES

The ECU Board of Trustees met via teleconference for a special called session on March 16, 2022. The meeting originated from Spilman 105 on the campus of East Carolina University in Greenville, NC. Chairman Scott Shook called the meeting to order.

ROLL CALL

Mr. Shook called on Megan Ayers, Assistant Secretary to the Board of Trustees, to call the roll. A quorum was established.

PRESENT:

Cassie Burt
Leigh Fanning
Dave Fussell
Van Isley
Fielding Miller
Jason Poole
Jeffery Roberts
Scott Shook
Vince Smith
Chandler Ward

ABSENT:

Tom Furr
Angela Moss
Jim Segrave

READING OF ETHICS STATEMENT

In compliance with the State Government Ethics Act, Mr. Shook read the conflict of interest statement and asked if anyone had a conflict to disclose. No conflicts were identified.

CLOSED SESSION

Mr. Shook asked for a motion to move into closed session.

Mr. Poole motioned the board move into closed session: to prevent the disclosure of confidential information under N.C. General Statutes §126-22 to §126-30 (personnel information); and the federal Family Educational Rights and Privacy Act; to consider the qualifications, competence, performance, character, fitness, or conditions of appointment of one or more prospective and/or current employees and/or to hear or investigate a complaint, charge, or grievance by or against one or more employees; to consult with an attorney to preserve the attorney-client privilege. The motion was seconded and passed unanimously. The board moved into closed session.

RETURN TO OPEN SESSION

Upon resumption of open session, the board considered a motion from closed session.

Mr. Poole moved the board approve the employment agreement for ECU Men's Basketball Coach, Mr. Michael Schwartz, as presented in board materials. The motion was seconded and approved unanimously.

MEETING ADJOURNMENT

Hearing no other business to come before the board, Mr. Shook asked for a motion to adjourn the meeting. The motion was made, seconded and passed unanimously.

The meeting was adjourned.

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Respectfully Submitted,
Megan Ayers
Assistant Secretary to the Board of Trustees



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252-328-6212 office | 252-328-4155 fax

Office of the Chancellor

TO: Michael Schwartz
FROM: Philip Rogers, Chancellor
CC: Jon Gilbert, Director of Athletics
DATE: March 16, 2022
SUBJ: ECU Head Coach of Men's Basketball Offer and Memorandum of Understanding ("MOU" or "Agreement")

East Carolina University ("ECU" or "University") and its Athletic Department (the "Department") are enthusiastic about the opportunity for Michael Schwartz ("Coach") to become the University's next Head Men's Basketball Coach. On behalf of East Carolina University, and subject to approval by the Board of Trustees of East Carolina University and a satisfactory background check, we extend an offer of employment to you as the Head Coach of our Men's Basketball Program (the "Program"). Upon your acceptance below, the terms of this offer will be incorporated into our Head Men's Basketball Coach Employment Agreement that will be promptly negotiated by the parties in good faith. The material business terms of our offer include:

1. Term. April 1, 2022 – March 31, 2027. Position is classified as non-faculty exempt from the State Human Resources Act (EHRA) position and expressly subject to all UNC and ECU policies, rules and regulations.
2. Duties. Reporting to the Athletic Director, Coach will serve as Head Coach of ECU's Men's Basketball Team, with all duties associated with the position. In addition to fulfilling responsibilities as Head Men's Basketball Coach, emphasis is given to fostering educational values and ensuring program integrity. Coach must comply with all applicable laws and policies.
3. Base Salary and benefits. \$400,000.00 annually and employment benefits as provided by the State of North Carolina to similarly situated employees.
4. Additional Compensation.
 - a. For promoting sales of season tickets, supporting the Pirate Club, and for marketing of weekly broadcast programs (television, radio, and internet): \$500,000.00 annually

- b. Vehicle/Phone/Temporary Accommodation. Loaned vehicle (dealer vehicle) or vehicle stipend per ECU guidelines and policy will be provided. Cell phone stipend in accordance with applicable ECU guidelines.
- c. Basketball Camp. Coach may operate basketball clinics or camps with AD approval and compliance with ECU policies and requirements regarding the same.
- d. Moving Expenses. Reimbursement of moving expenses consistent with ECU Athletics Department policy, up to \$15,000.00.

5. Incentive Bonuses

- a. Ticket Sales Incentive.

Either

- i. Bonus for increased sales of Men's Basketball season tickets as follows:

<u>Increase in Men's Basketball Season Tickets Sold Over Immediately Preceding Year Where Full Slate of Games Were Played and Full Attendance Permitted</u>	<u>Men's Basketball Season Ticket Sales Increase Incentive Payment</u>
250-499	\$10,000.00
500-749	\$15,000.00
750-999	\$20,000.00
1000-1249	\$25,000.00

; or

- ii. Bonus for total season ticket Sales of 4700 or more. If sales of Men's Basketball Season Tickets Sold is equal to 4,700 tickets or more, Coach shall receive a one-time payment of \$30,000.00 in lieu of any bonus for increased Men's Basketball Season Tickets Sold as described in the above chart.

- b. Academic Performance Incentives.

- i. APR. With regard to the single-year Academic Performance Rate ("APR") for the Men's Basketball Team:

1. An APR equal to 985 or greater will entitle Coach to \$15,000.00

- ii. GPA. With regard to the Grade Point Average ("GPA") for the Men's Basketball Team:

1. A GPA of 3.00-3.24 will entitle Coach to receive \$2,500.00;
 2. A GPA of 3.25-3.49 will entitle Coach to receive \$5,000.00; or
 3. A GPA of 3.50 or above will entitle Coach to receive \$10,000.00 (the three potential GPA bonuses are not cumulative).
- iii. GSR. For a Men's Basketball Team single-year Graduation Success Rate ("GSR") equal to or greater than 80%, Coach will receive \$15,000.00
- iv. Conference Academic Award. If the Men's Basketball Team earns the Conference Academic Award for the academic year Coach will receive \$5,000.00.
- c. Team Performance Incentives.
- i. For each regular season in which the Men's Basketball team wins twenty (20) or more regular season games, Coach will receive \$10,000.00.
 - ii. For each regular season in which the Men's Basketball team wins fifty percent (50%) or more of its American Athletic Conference ("AAC") games Coach will receive \$25,000.00.
 - iii. For each regular season in which the Men's Basketball team is the regular season champion of the AAC, Coach will receive \$50,000.00. Coach will receive this amount where the men's basketball team is a co-champion with one or more other AAC teams.
 - iv. AAC Tournament (or any conference to which ECU subsequently belongs)
 1. For each regular season in which the Men's Basketball team makes an appearance in the final game of the Men's Basketball tournament of the AAC the Coach will receive \$10,000.00.
 2. For each regular season in which the Men's Basketball team wins the Men's Basketball tournament of the AAC, Coach will receive \$15,000.00.

These bonuses (c.iv.1.-2.) are not cumulative.
 - v. NCAA Tournament.
 1. If the Men's Basketball team participates by playing in the NCAA Division I Tournament, Coach will receive \$25,000.00

2. If the Men's Basketball team advances to the Regional Semifinals (earns Sweet 16 appearance) of the NCAA Division I Tournament, Coach will receive \$30,000.00.
3. If the Men's Basketball team advances to the Final Four by winning a Regional Championship of the NCAA Division I Tournament, Coach will receive \$40,000.00.
4. If the Men's Basketball team plays in the NCAA Division I Tournament Championship Game, Coach will receive \$50,000.00.
5. If the Men's Basketball team wins the NCAA Division I Tournament Championship Game, Coach will receive \$100,000.00.

These bonuses are cumulative.

vi. National Ranking and Recognition.

1. Final AP Poll. In each year where the Men's Basketball team is ranked as one of the top 25 teams in the nation in the Final Associated Press (AP) Poll, Coach will receive \$50,000.00.
2. National Coach of the Year. If Coach is named "National Coach of the Year" in NCAA Division I Basketball by the Associated Press, Coach will receive \$50,000.00.
3. Conference Coach of the Year. If Coach is named as "Men's Basketball Coach of the Year" in the AAC, as tallied by the AAC, or of any conference to which UNIVERSITY subsequently belongs, Coach will receive \$25,000.00.

All Incentive Pay (Section 5) is immediately earned and vested when the prerequisite performance condition is satisfied. At the discretion of ECU, Incentive Bonuses will be unavailable in any season during which (a) the Basketball Program under Coach's supervision, including, but not limited to, a member of the men's basketball Coaching staff, a player, or any other person affiliated with the basketball program who reports directly or indirectly to Coach, is under investigation, on probation, or has been sanctioned by the NCAA or the AAC, for conduct occurring while Coach is head coach for ECU; or (b) for Coach being under investigation, probation, or sanctioned for conduct occurring while he is at ECU or when he worked previously at another university. In the event payment is delayed because of an investigation, if the investigation clears Coach of the alleged violation within 24 months of the bonus being earned, he will be paid the bonus.

6. Automatic Extension: This agreement shall automatically be extended upon completion of certain performance goals by Coach. In the event that the Team finishes with twenty (20) or more wins during any one of the initial four seasons of the term, this Agreement shall automatically be extended upon all terms and conditions, by mutual agreement of the parties, for one (1) year. Alternatively, in the event that Team finishes in the top-third of the American Athletic Conference (or any other conference the Team is a member of) final standings during any one of the initial four seasons of the term, this Agreement shall automatically be extended upon all terms and conditions for one (1) year. **The automatic extensions contemplated herein are non-cumulative.** For purposes of clarity, only a single one-year extension can be triggered by this section. Under no circumstances does the meeting of these performance goals, and the subsequent automatic extension of this Agreement, prohibit the renegotiation of this Agreement's terms and conditions, including but not limited to the extension of this Agreement beyond that required by the terms of this clause hereunder.

7. Outside income. With prior written approval from the Chancellor and Director of Athletics, Coach may enter into outside agreements for media appearances and other personal appearances and may accept remuneration for commercial endorsements that fall within the guidelines of the National Collegiate Athletic Association ("NCAA") and do not conflict with sponsorship agreements entered into by ECU. Any outside compensation is subject to compliance with the "Policy on External Professional Activities for Pay" of the UNC Board of Governors and ECU's "Regulation on Conflicts of Interest, Commitment, and External Professional Activities for Pay," which are herein incorporated by reference, and is subject to all other relevant State and Federal policies and laws concerning conflict of interest. The Coach must obtain prior written approval from the Chancellor for all athletically related income and benefits from sources outside ECU. Such activities are independent of Coach's employment with ECU, and ECU shall have no responsibility for any claims arising therefrom. Coach shall indemnify and hold harmless ECU from any and all claims and/or losses as a result of Coach's participation in such activities.

Activities for outside compensation shall include, but not be limited to, engaging in any radio, television, motion picture, Internet, stage, writing or any similar activity, personal appearances, commercial endorsements, and sport camps. Subject to specific reporting requirements established by ECU, no outside activities will be allowed without having on file with ECU, a signed approval of the "Notice of Intent to Engage in External Professional Activities for Pay" prior to engaging in those activities, which approval shall not be unreasonably withheld.

In accordance with ECU policy and NCAA Bylaw 11.3.2, which are incorporated herein by reference, Coach shall report annually on July 1 to the Athletics Director all athletically related income from sources outside ECU, including but not limited to, income from sports camps and clinics, television and radio programs, commercial endorsements, consulting agreements, and all other athletically-related income from

whatever outside source(s). Coach shall ensure that upon request ECU has reasonable and prompt access to all records of Coach to verify this report.

8. Termination of MOU by Coach. In the event Coach terminates his employment or this Agreement without cause, COACH shall pay ECU liquidated damages in lieu of any and all other legal remedies or equitable relief that ECU would be entitled to solely as a direct result of the early termination of this Agreement, equal to the following amounts in each Contract Year (April 1 – March 31) of this Agreement, respectively:

AGREEMENT YEAR	LIQUIDATED DAMAGES OWED
Contract Year 1	\$1,600,000.00
Contract Year 2	\$1,200,000.00
Contract Year 3	\$800,000.00
Contract Year 4	\$400,000.00

In the event the Automatic Extension in Section 6 above is triggered, the liquidated damages amount for the Contract Year in which the performance goal(s) are met shall be repeated for the next Contract Year and the remaining liquidated damages amounts shall be adjusted to the next Contract Year. For example, if Coach meets a performance goal during Contract Year 3 triggering the Automatic Extension, then the liquidated damages amount for Contract Year 4 shall be \$800,000, Contract Year 5 - \$400,000 and Contract Year 6 - \$0. The payment of liquidated damages to ECU does not prohibit ECU from bringing claims against Coach that are not directly related to the termination of his employment (including, but not limited to, damages attributable to a Title IX issue, etc.).

9. Termination of MOU by ECU without cause. In the event ECU terminates Coach's employment or this Agreement without cause, ECU will pay Coach an amount equal to base salary (exclusive of benefits), as if Coach were performing duties until expiration of MOU, and no more. This obligation to pay Coach will be offset by any amount Coach earns or is paid by a third party during the remaining term of the MOU. Further, this obligation ceases entirely sixty (60) days after ECU provides written notice to Coach describing documented evidence ECU has that there would have been grounds to terminate the MOU for cause had Coach remained employed by ECU at the time of the notice is provided to Coach.
10. Termination of MOU by ECU for cause.
- a. Termination for bad conduct. ECU may terminate MOU for appropriate reasons including, but not limited to:
 - i. a material breach by Coach of his duties or his employment agreement;

- ii. a violation of any law or rule applicable to intercollegiate athletics that ECU deems in its sole discretion to be serious or intentionally or negligently committed;
- iii. violation by the Athletic Program under Coach's direction, including, but not limited to, a member of the men's basketball Coaching staff, a player, or any other person affiliated with the basketball program who reports directly or indirectly to Coach, of rules or regulations of the NCAA, AAC, or any other association, conference or like organization with which ECU is or may become affiliated, state or federal laws, rules or regulations, or any rules or policies of ECU or the University of North Carolina, if said violation is deemed by ECU, in its sole discretion, to be serious or have been intentionally or negligently committed and if COACH either (i) knew or should have known of the likelihood that such violation was going to occur and failed to take reasonable steps to prevent such violation, including appropriate supervision, monitoring and instruction or promotion of an atmosphere of compliance, or (ii) failed to immediately report the violation to the Director of Athletics, the Associate Director of Athletics for Compliance, or such other staff as may be provided in ECU policy ;
- iv. other misconduct, including without limitation fraud, dishonesty, acts of violence, or other conduct that is contrary to the UNIVERSITY's mission as a public educational institution;
- v. breach of the representation and warranty made by Coach that he has disclosed previous bad acts as specified in the MOU or any other instance where ECU becomes aware of any misconduct or violation of law or policy or potential or alleged misconduct or violation of law or policy by Coach or an athletic program under Coach's direction, including, but not limited to, a member of the men's basketball Coaching staff, a player, or any other person affiliated with the basketball program, at another NCAA member institution having occurred or allegedly occurred prior to the date of Coach's signature on the MOU.

In the event of termination for cause, the UNIVERSITY shall be obligated to pay COACH one month of his Base Salary and no more.

- b. Termination upon death or permanent disability. ECU's obligations under MOU will terminate immediately upon Coach's death or, as determined in the sole discretion of the Chancellor, Coach's permanent disability.
- c. Disciplinary Action less than Termination. ECU may impose disciplinary action less severe than termination of employment, including, but not limited to, suspension with or without pay and imposition of fines, for any of the reasons in the MOU that are bases for termination for cause.

11. NCAA Rules and Regulations. If COACH is found to have committed violations of NCAA rules or regulations, whether while employed by ECU or during prior

employment at another NCAA member institution, COACH shall be subject to disciplinary action as set forth in the provisions of the NCAA infractions process and applicable ECU policies, regulations or rules, including the University's EHRA Employment Policy. Such disciplinary action may include suspension without pay or termination for cause.

12. BOT Approval and Future Amendments. This MOU shall not be effective until signed by the Chancellor and approved by the Board of Trustees of East Carolina University, as indicated by the signature of its Chairman or authorized Board officer. The approval of this MOU is further contingent upon consultation with and, as required by UNC policy or practice, approval of the MOU and/or certain or all of its terms by, the UNC Board of Governors and/or representatives of UNC System Office. No amendments, changes, additions, deletions, or modifications to or of this MOU shall be valid unless reduced to writing, signed by the parties and approved by the Board of Trustees of ECU.
13. Entire Agreement. This instrument contains the entire Agreement of the parties and fully supersedes any and all prior offers, discussions, agreements or understandings between the parties hereto. The Agreement may not be changed or amended orally, but only by an Agreement in writing signed by the party against whom enforcement of any waiver, amendment, change, modification, extension or discharge is sought.
14. Public record: The parties agree that, upon execution, this MOU is a Public Record subject to disclosure pursuant to North Carolina's Public Records Law.
15. Immunity Not Waived: It is expressly agreed and understood between the parties that ECU is a constituent institution of the University of North Carolina and an agency of the State of North Carolina and that nothing contained herein shall be construed to constitute a waiver or relinquishment by ECU of its right to claim such exemptions, privileges, and immunities as may be provided by law.
16. Interpretation and Applicable Law: This Agreement is made under and shall be interpreted according to the laws of the State of North Carolina. Any rule to the effect that an agreement shall be construed against the party drafting shall have no application to this Agreement.
17. Appropriation condition. The payment of all forms of compensation set forth in this Contract is subject to the approval of the annual operating budget by the University, its Board of Trustees, and The University of North Carolina Board of Governors, and the sufficiency of appropriations or the availability of sufficient funds within the Athletic Department's budget to pay such compensation.

18. Signing Bonus. Coach shall be entitled to a one-time bonus upon execution of the Head Men's Basketball Coach Employment Agreement in accordance with the following milestones:
- a. \$5,000.00 if the Head Men's Basketball Coach Employment Agreement is fully executed by the Parties on or before April 15, 2022; or
 - b. \$2,500.00 if the Head Men's Basketball Coach Employment Agreement is fully executed by the Parties on or before May 15, 2022.
19. Acknowledgment of Terms: By signing below, Coach is agreeing to the terms outlined in this document, all of which are considered material to the Agreement. Coach also agrees and understands that these terms will be incorporated into the UNIVERSITY'S Head Coach of Men's Basketball Employment Agreement that the parties will promptly negotiate in good faith and intend to execute as soon as practicable. Once fully executed and effective, this MOU will continue in effect as the employment agreement for Coach with ECU until this MOU is terminated by the earlier of the following:
- a. This MOU is terminated or amended at any time upon mutual written Agreement of all parties; or
 - b. Coach's employment with ECU is terminated.

We are providing four (4) duplicate originals of this memorandum for your signature, one of which will be returned to you when fully executed.

We look forward to a long and fruitful relationship.

Sincerely,



Philip Rogers
Chancellor

3-15-22
Date:

Accepted by:

[Name]

Date

(The remainder of this page is left blank intentionally)

Approved by the Board of Trustees of East Carolina University on the ____ day of March, 2022.

Scott Shook
Chair

Date

Attested to:

Assistant Secretary

Date