

SAINT PETER CLAVER SCHOOL

St. Peter Claver School of the Sisters of Notre Dame de Namur

CONSTITUTION

Constitution of St. Peter Claver School of the Sisters of Notre Dame de Namur in the Catholic Diocese of Kroonstad in the Free State Province of the Republic of South Africa

1. This is the Constitution of St. Peter Claver School of the Sisters of Notre Dame de Namur in the Catholic Diocese of Kroonstad, in the Free State Province of the Republic of South Africa, situated at 6148 Constantia, Maokeng
2. St. Peter Claver School (the “School”) was established by the then Congregation of the Sisters of Notre Dame with the authority of the then Catholic Vicariate of Kimberley in 1916 in the Kroonstad area, for the purpose of providing faith-based education principally to Catholic children in what is now the Catholic Diocese of Kroonstad (the “Diocese”)
3. The School is an association of persons (universitas personarum) for the purposes and subject to the terms and conditions set forth in this Constitution
4. The name of the association of persons is the St. Peter Claver School of the Sisters of Notre Dame de Namur
5. The members of the School shall be the members for the time being of the Board of Governors (the “Board”), the present members of which are the signatories to the Constitution.
6. The Owner, being The Sisters of Notre Dame de Namur, represented by the Unit Moderator of The Sisters of Notre Dame de Namur (the “Moderator”), together with the present Bishop of the Diocese, wish to return the School as a Catholic School and province that the community, parents and staff of the School should participate together with The Sisters of Notre Dame de Namur and the Bishop in governance of the School.

MAIN AND ANCILLARY OBJECTIVES

7. The School is an independent Catholic school as allowed in Section 29 (3) of the Constitution of the Republic of South Africa, 1966.
8. It shall be a place where the Gospel is proclaimed and loved, and in which the community is invited to a life that integrates the spiritual, intellectual and physical domains: this includes conscience and character formation. The School is not only committed to proclaiming and living the Gospel but also offers an education that is relevant to the needs and aspirations of its students. Living the Gospel makes the School a comfortable and happy place for all students and members of staff, whether or not they are Catholic.
9. The School is an agent of evangelization within the local Catholic Church and it is accountable for this to the Bishop of Kroonstad, who is the focus of unit within the Diocese. The educators and learners shall be encouraged to strive within the community for justice and to reject oppression and discrimination on the basis of race, sex, creed, language or culture.
10. It shall teach the children to value justice, truth, love, freedom, peace, reconciliation and respect for each individual. Learners shall be encouraged to become creative and self-confident. The School shall espouse high moral, spiritual and academic standards and give due attention to educational activities outside the classroom.

11. The School shall give attention to relevant education with the community. It shall promote freedom of expression and the right of all people to learn, and it shall encourage enquiry and the development of individual integrity in its learners. It shall associate itself with democratic bodies in education in the Catholic Church and in the wider community.
12. Parents shall be involved in the decision-making processes of the School through their representatives on the Board. The School shall teach its learners to form sound relationships with parents and other adults.
13. The School shall not discriminate on the basis of race, colour or gender in the admission of learners or the employment of staff.
14. In this context, the further objectives of the School are to carry on activities which are of a philanthropic and benevolent nature, having regard to the needs, interests and well-being of the general public in the Republic of South Africa, and in particular the provision of education by an independent school as defined and registered in terms of Section 46 of the South African Schools Act 84 of 1996.

THE BISHOP

15. The Bishop of the Diocese of Kroonstad is the guarantor of the School's Catholic identity and in all pastoral matters is the proper authority as defined in the Code of Canon Law.
16. The Bishop shall be entitled to appoint a member of the Board as his representative.

IDENTITY AS A BODY CORPORATE

17. The Board will ensure that no single person ever directly or indirectly controls the decision-making powers of the school.
18. The School is a juridical person with the power of doing or performing such acts or things as bodies corporate by law do or perform, having perpetual succession and entrusted with fulfilling the task of attaining its object for the public good, it shall, in its name, be capable in law of suing and of being sued. The School has the capacity to acquire rights and obligations, and in particular shall in its name, be capable of opening bank accounts, investing, lending and borrowing moneys, or purchasing or otherwise acquiring, holding, leasing, buying, selling, exchanging, alienating and hypothecating property, moveable or immovable, burdening such property with a servitude, or otherwise conferring any real rights therein, and generally, without in any way being limited by or restricted to the powers specified above, of entering into any transaction involving contractual or statutory rights and obligations or involving real rights or any other kind of transaction and of doing and performing such acts and things as bodies corporate may by law do or perform.
19. The rights and obligations of the School are independent of its members. Ownership of immovable property vest in the Owners and movable property and other assets vests in the School. The School exists in its own right separately from its members. Members have no rights to assets of the School.

20. Office bearers and members of the School are not liable for any obligations of the School and are not vested with its rights or property. They are liable for damages suffered by the School arising from their negligent, dishonest or fraudulent actions.
21. The School has perpetual succession and shall continue for an indefinite period. If even a single member of the Board survives, the rights of the School devolve upon that member. It may be terminated in accordance with the procedure and in the manner stipulated in this Constitution.
22. No funds of the School are to be distributed to any person (otherwise than in the course of the operations of the School). All funds are to be used for such operations, and funds in excess of such needs from time to time will be invested in a financial institution (as defined in section 1 of the Stock Exchanges Control Act, 9185) or any other financial instrument approved by the Commissioner.
23. The Board shall ensure that three persons, who shall be members of the Board and are not connected persons relative to each other, accept fiduciary responsibility for the School to the Commissioner in relation to its PBO obligations in terms of the Regulations under the Non Profit Organizations Act 71 of 1997 as amended by Act 17 of 2000 (the “Act”).

LEGAL ACTION

24. The School may sue or be sued in its own name.

PROPERTY

25. All immovable property and capital funds shall be registered or invested in the name of The Sisters of Notre Dame de Namur and shall be held by The Sisters of Notre Dame de Namur in trust for the School.
26. The use, control and disposal of immovable property and capital funds, the erection, alteration and demolition of buildings, and the power to incur debts above the amount of R2,000,000 shall be governed by the Canon Law of the Catholic Church and church regulations in force at the time in the territories of the Southern African Catholic Bishops’ Conference.
27. The Board shall have the power to hire, acquire, pledge as security, let, sell, or otherwise dispose of movable property on behalf of the School.

THE BOARD OF GOVERNORS

28. All executive powers of the School shall vest in a body to be known as the Board of Governors (the “Board”). The Board acts on behalf of the School in all matters affecting the conduct of its affairs, in furtherance of its objectives. The Board shall have the authority to do whatever is required to secure the financial viability and continued existence of the School, which authority includes, inter alia, the following:
 - 28.1 levying of fees
 - 28.2 regulating the administration of the School according to the acceptable business practices and the requirements of the law

- 28.3 delegation of such powers as it deems fit to an executive or other committee.
29. The Board shall not carry on any business undertaking or trading activity otherwise than to the extent that it conforms to Section 30(3)(b)(iv) of the Act.
30. The Board may not distribute any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and it shall use its funds solely for the object for which it has been established or to invest such funds in terms of Section 30(3)(b)(ii) of the Act.
31. The members have no right to the profits of the Board which are to be used solely for the promotion of its objects.
32. No donation will be accepted that is prohibited in terms of Section 30(3)(b)(v) of the Act.
33. In the case that the Board provides funds to any public benefit activity, reasonable steps will be taken to ensure that the funds are utilized for the purpose for which they have been provided.
34. The Board will, within such period as the Commissioner may determine, register in terms of the Non-Profit Organizations Act No 51 of 1995 and comply with any other requirements imposed in terms of that Act.
35. No remuneration will be paid to any employee, office bearer, member or any person that is excessive having regard to what is generally considered reasonable in the sector and in relation to the service rendered.
36. No member of the Board shall be personally liable for any loss or debt incurred by the School, unless the loss or debt shall occur as a result of his or her own fraud, dishonesty or deliberate negligence.
37. The Board shall, for the purpose of achieving its objectives, have the following duties and responsibilities, subject always to the consent of the Unit Moderator, the Bishop, or their nominees:
- 37.1 To appoint and if necessary dismiss the Head of School
 - 37.2 To appoint and dismiss, after due procedure, members of staff on the recommendation of Head of School or the disciplinary tribunal
 - 37.3 To enter into written contracts of employment with staff on appointment
 - 37.4 To further the interests, well-being and education of the learners enrolled
 - 37.5 To foster co-operation and sound relationships among parents, teachers, learners and non-teaching staff, and between the immediate School community and residents of the School's catchment area
 - 37.6 To be responsible for managing the property and finances of the School
 - 37.7 To manage, insure and otherwise maintain the premises of the School
 - 37.8 To fix the fees of the School, in consultation with the Unit Moderator and the Bishop.
 - 37.9 To institute or defend legal proceedings on behalf of the School
 - 37.10 To determine the policies of the School

- 37.11 To perform such other functions as may be assigned to the Board by constitution
- 37.12 To perform such acts and functions as may be necessary to attain the above aims and objectives, and to account to all parents, teachers, learners and non-teaching staff for such acts and functions in a democratic and transparent manner.

MEMBERSHIP OF THE BOARD

- 38. The Board shall comprise at least three persons who accept fiduciary responsibility for the School and who are not connected persons, and not more than 15 persons, among who shall be:
 - 38.1 The Unit Moderator or her nominee
 - 38.2 The Bishop or his nominee
 - 38.3 Head of School
 - 38.4 Four elected representatives of the parents, elected by the parents at a meeting called annually for the purpose of making such decisions.
 - 38.5 One member of the pastoral team of the parish in which the School is situated
 - 38.6 Two additional members nominated by the Board and appointed by the Unit Moderator and the Bishop. Of these additional members, one shall be an educationalist.

TERMS OF OFFICE

- 39. The elected and appointed members shall have a period of office of three years, and may only be re-elected for one further consecutive period, after which a full period of at least three years has to elapse before the same person may be nominated for service on the Board.
- 40. Of the elected members first elected upon the adoption of this Constitution, one shall be elected for one year, two shall be elected for two years and two shall be elected for the full three-year term.

APPROVAL OF BOARD MEMBERSHIP

- 41. Membership of the Board shall be subject to the approval of the Unit Moderator and the Bishop and at all times the majority of members shall be practicing Catholics.

CO-OPTION

- 42. The Board has the right to co-opt non-voting members to its deliberations for a limited period as the need arises.

CESSATION OF MEMBERSHIP

- 43. A member of the board shall cease to be a member if that person:
 - 43.1 fails to attend three consecutive meetings without an apology given and duly recorded
 - 43.2 is not able to subscribe to the spirit of the mission statement of this Constitution and the values expressed in the teachings of the Catholic Church

VACANCIES ON THE BOARD

44. Subject to the approval of the Unit Moderator and the Bishop, vacancies on the Board may be filled by decision of the Board for the un-expired period of the vacating member's term of membership.

MEETINGS OF THE BOARD

45. A meeting of the Board shall be held at least once a quarter.
46. The Quorum for a meeting of the Board shall be five members, including always the Unit Moderator or her nominee and the Bishop or his nominee.
47. The Board shall conduct its meetings and regulate its proceedings as it may find convenient, provided that its members shall annually elect from their number the following office bearers - a Chairperson, Vice Chairperson, Secretary and Treasurer, provided that Head of School may not be an office bearer and provided further that office bearers may be re-elected.
48. The Chairperson shall be elected by the voting members of the Board for a three year term of office. Head of School and Staff representative, as employees of the School, shall not be eligible for the office of Chairperson of the Board.
49. The Chairperson may, on notice given, effectively and in good time, convene a meeting of the Board, and shall be obliged upon the requisition of any four members of the Board to convene such a meeting.
50. Voting on all matters shall be by two-thirds majority of all voting members present.
51. Resolutions concerning the policy of the School as spelt out in the Mission Statement, the dismissal or appointment of Head of School and the Head of the Religious Education Department and borrowings of more than R5 million or more require the vote of the Unit Moderator or her nominee.
52. Proper minutes shall be kept of the proceedings of the Board, and a record of those persons present at such meetings. The minutes shall be circulated to members at least two weeks prior to the following meeting.

HEAD OF SCHOOL

53. Head of School shall be appointed by the Board subject to the approval of the Unit Moderator and the Bishop and shall be a full voting member of the Board.
54. Head of School shall be responsible to the Board for the management of the School in accordance with the provisions of this constitution and the policies of the School as agreed by the Board.
55. The terms of Head of School's employment shall be set out in a written contract of service with the Board.

56. Head of School shall be responsible for the professional management of the School, and for nurturing and developing the staff of the School. He or she shall recommend the appointment and, after due procedure, the dismissal of staff to the Board.

EXCLUSION OF HEAD OF SCHOOL FROM BOARD MEETINGS

57. A meeting of the Board from which Head of School is excluded shall only be convened after Head of School has been given reasons for his or her exclusion in the writing.

THE EXECUTIVE COMMITTEE

58. The Board shall delegate to an Executive Committee of the Board such powers it requires to be responsible for the day to day management of the School.
59. The members of the Executive Committee shall be the Chairperson of the Board and the Unit Moderator or her nominee together with two other persons appointed by the Board.
60. Head of School shall not be a member of the Executive Committee, but shall report to the Executive Committee, which in turns reports to the Board.
61. The Executive Committee shall meet as often as it may deem necessary.
62. Head of School shall have the right to have any matter placed on the agenda of the Executive Committee.
63. At the request of Head of School the Chairperson shall convene a meeting of the Executive Committee.
64. A quorum of the Executive Committee shall be 3 (three) members.
65. The Board may establish sub-committees for particular needs, such as financial management, screening and interviewing of staff, disciplinary procedures, a Parents' Committee, a Staff Representatives' Committee.
66. These sub-committees may co-opt non-Board members to serve on them, subject to the approval of the Board.
67. These sub-committees will report to the Board.
68. An annual general meeting of the members shall be held within a period of 12 (twelve) months of the adoption of this constitution, and subsequent annual general meetings shall be held within 3 (three) months after the end of each financial year.
69. The business of the annual general meeting shall include, *inter alia*:
- 69.1 presentation of the chairperson's report
 - 69.2 adoption of the annual financial statements
 - 69.3 election of at least four (4) members of the Board
 - 69.4 appointment of auditors

- 69.5 approval of a budget of income and expenditure for the ensuing year
- 69.6 other such matters as may be considered appropriate.

70. The quorum for annual general meetings shall be five members provided that one representative of the Owner is present.

NOTICE OF MEETINGS

71. Effective notice of meetings must be given in good time by the Secretary or the Chairperson.

FINANCIAL MATTERS

- 72. The School shall be conducted on a non-profit basis, with the intent and purpose that its capital and income, whenever derived, shall be applied solely towards the promotion of its objectives, and no portion thereof shall be paid or transferred, directly or indirectly, (whether by way of dividend, bonus or otherwise howsoever) by way of profit or distribution to any of the members of the School; provided that nothing herein contained shall preclude the payment in good faith to a member or any other person for services rendered or out of pocket expenses approved by the Board.
- 73. The financial year end of the School will be the last day of December of each year.
- 74. The business of the School shall be conducted through bank accounts. Two signatures, one being that of Head of School or the Chairperson of the Board shall be required to operate the account.
- 75. Financial transactions including deposits and investments and the withdrawal of deposits and the sale of investments require the written approval of the Chairperson.
- 76. Contracts with a value of ten thousands rand (R10,000.) or more require the written approval of the Chairperson. The Board shall have the power to review this amount from time to time.
- 77. Head of School shall in September of each year present a budget for the following year to the Board for approval. The Board, after receiving the recommendations of the finance sub-committee, shall fix the fees to be paid by parents and the salaries to be paid to teachers in the following year.
- 78. The Board is responsible for controlling the revenue and expenditure of the School, through the annual budget. It may mandate a finance sub-committee to do this work.
- 79. The Board of Governors shall cause proper accounting records of the financial affairs of the School to be kept. The accounts of the School shall be audited annually by an auditor who is registered in terms of the Public Accountants and Auditors Act. The audited accounts shall be available for inspection by members of the School community.

DISPUTE RESOLUTION

80. Any dispute between members of the Board shall be referred to mediation, save that in matters relating to religious education and the appointment or dismissal of chaplains or teachers of religious education the dispute shall be referred to the Unit Moderator or the Bishop, as appropriate, whose decision shall be final.

PROVISIONS FOR WINDING UP

81. In the event of the School ceasing to operate as an independent Catholic School or being dissolved and ceasing to exist, the unexpended portion of any funds and any other assets which may remain in the hands of the Board immediately prior to cessation or dissolution, shall, after all debts and liabilities have been paid, be given or made over to the Sisters of Notre Dame de Namur, who in consultation with the Bishop, shall use the capital and income of the School for educational purposes, provided any organization so benefiting shall be a similar public benefit organization or organizations which have been approved in terms of Section 30 of the Act and is exempt from tax under the provisions of section 10(1)(cA)(i) of the Act, as shall be determined by the Unit Moderator of the Sisters of Notre Dame de Namur or her nominee after consultation with the Board, and, in default of such determination by the Unit Moderator or her nominee, then to such organization/s aforesaid as may be determined by any Judge of the High Court of the Republic of South Africa upon application in Chambers made by the Unit Moderator or her nominee or by an erstwhile member of the dissolved Board. Such capital and income shall not be used in support of any institution that discriminates on the grounds of race, colour, or gender in the appointment of staff or the admission of learners.
82. Nothing contained in the above sub-clause shall be construed as preventing The Sisters of Notre Dame de Namur of Notre Dame of South Africa from disposing of the School as a going concern to any person or body or itself running the School with a view to assuring that the School will function in terms of the objectives as stated here above in the service of the Catholic Church and the community.

BY-LAWS

83. The Board shall have the power to make or repeal by-laws to provide for the convening of an official meeting of parents, the establishment of committees, as mentioned above. By-laws shall not be inconsistent with provisions of the Constitution. Any dispute regarding the validity of a by-law shall be referred to the Unit Moderator and the Bishop whose decision shall be final.

AMENDMENT OF THE CONSTITUTION

84. Save for clauses relating to the mission and objectives, which may be amended only with the consent of the Sisters of Notre Dame de Namur and the bishop, this Constitution, may be amended by a two-thirds majority of members present at a meeting called for such purpose and for which effective notice has been given in good time of such amendment and meeting. A copy of amendments to the constitution will be submitted to the commissioner of the South African Revenue Services.

ADOPTION

This Constitution was adopted and signed with changed terminology on this _____day
of _____

In the Year of our Lord _____ by the members of the association of persons
(*universersital personarum*), being the present Members of the Board as set out below:

1. _____
Name Authorized Signature
Unit Moderator of the sisters of Notre Dame de Namur

2. _____
Name Authorized Signature
Bishop of the Diocese of Kroonstad

3. _____
Name Authorized Signature
Representative of the Board of
Governors of St Peter Claver School

Original Signed and accepted 27 May 2003.
Modified on 13 October 2011
Modified on 14 August 2013