§ 3813. Presentation of claims against the governing body of any school district or certain state supported schools. 1. No action or special proceeding, for any cause whatever, except as hereinafter provided, relating to district property or property of schools provided for in article eighty-five of this chapter or chapter ten hundred sixty of the laws of nineteen hundred seventy-four or claim against the district or any such school, or involving the rights or interests of any district or any such school shall be prosecuted or maintained against any school district, board of education, board of cooperative educational services, school provided for in article eighty-five of this chapter or chapter ten hundred sixty of the laws of nineteen hundred seventy-four or any officer of a school district, board of education, board of cooperative educational services, or school provided for in article eighty-five of this chapter or chapter ten hundred sixty of the laws of nineteen hundred seventy-four unless it shall appear by and as an allegation in the complaint or necessary moving papers that a written verified claim upon which such action or special proceeding is founded was presented to the governing body of said district or school within three months after the accrual of such claim, and that the officer or body having the power to adjust or pay said claim has neglected or refused to make an adjustment or payment thereof for thirty days after such presentment. In the case of an action or special proceeding for monies due arising out of contract, accrual of such claim shall be deemed to have occurred as of the date payment for the amount claimed was denied.

2. Notwithstanding anything to the contrary hereinbefore contained in this section, no action or special proceeding founded upon tort shall be prosecuted or maintained against any of the parties named in this section or against any teacher or member of the supervisory or administrative staff or employee where the alleged tort was committed by such teacher or member or employee acting in the discharge of his duties within the scope of his employment and/or under the direction of the board of education, trustee or trustees, or governing body of the school unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law. Every such action shall be commenced pursuant to the provisions of section fifty-i of the

general municipal law; provided, however, that this section shall not apply to: (i) any claim to recover damages for physical, psychological, or other injury or condition suffered as a result of conduct which would constitute a sexual offense as defined in article one hundred thirty of the penal law committed against a child less than eighteen years of age, incest as defined in section 255.27, 255.26 or 255.25 of the penal law committed against a child less than eighteen years of age, or the use of a child in a sexual performance as defined in section 263.05 of the penal law committed against a child less than eighteen years of age; or

(ii) any civil claim or cause of action revived pursuant to section two hundred fourteen-j of the civil practice law and rules.

2-a. Upon application, the court, in its discretion, may extend the time to serve a notice of claim. The extension shall not exceed the time limited for the commencement of an action by the claimant against any district or any such school. In determining whether to grant the extension, the court shall consider, in particular, whether the district or school or its attorney or its insurance carrier or other agent acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section or within a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including: whether the claimant was an infant, or mentally or physically incapacitated, or died before the time limited for service of the notice of claim; whether the claimant failed to serve a timely notice of claim by reason of his justifiable reliance upon settlement representations made by an authorized representative of the district or school or its insurance carrier; whether the claimant in serving a notice of claim made an excusable error concerning the identity of the district or school against which the claim should be asserted; and whether the delay in serving the notice of claim substantially prejudiced the district or school in maintaining its defense on the merits.

An application for leave to serve a late notice shall not be denied on the ground that it was made after commencement of an action against the district or school.

Nothing contained in this subdivision shall affect claims arising out of contracts entered into by the parties before the effective date of this subdivision; nor shall anything contained in this subdivision affect non-contractual claims which have accrued before the effective date of this subdivision.

2-b. Except as provided in subdivision two of this section and, notwithstanding any other provision of law providing a longer period of time in which to commence an action or special proceeding, no action or special proceeding shall be commenced against any entity specified in subdivision one of this section more than one year after the cause of action arose; provided, however, that nothing contained in this subdivision shall be deemed to modify or supersede any provision of law specifying a shorter period of time in which to commence an action or special proceeding against any such entity. For purposes of this subdivision, a cause of action against the school district of residence for reimbursement of tuition costs incurred pursuant to subdivision four of section thirty-two hundred two of this chapter by the school district in which a family home at board is located shall arise as of the date payment for the amount claimed was denied.

3. The provisions of this section shall not supersede, alter or affect the provisions of section twenty-five hundred twelve of this chapter.

4. In any action for personal injuries by a passenger on a school bus against a school district, school bus operator under contract with a school district, or any agent or employee of a district or operator (including, but not limited to, bus drivers, matrons, teachers serving as chaperones and volunteers) no such person shall be held liable solely because the injured party was not wearing a seat safety belt; provided, however, that nothing contained herein shall be construed to grant immunity from liability for failure to:

(a) maintain in operating order any equipment required by statute, rule or regulation;

(b) comply with applicable statutes, rules or regulations.